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November 18, 2008

Hon Anne Quinlan, Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20423



Re: *Delaware and Hudson Railway Company, Inc. and The New York, Susquehanna and Western Railway Corporation — Joint Relocation Project Exemption — Binghamton, New York*
STB Finance Docket No. 35197

Dear Secretary Quinlan

Enclosed for filing please find the unbound original, 10 bound copies, and 3 compact discs containing electronic copies of the Verified Notice of Exemption submitted by Delaware and Hudson Railway Company, Inc dba Canadian Pacific and The New York, Susquehanna and Western Railway Corporation pursuant to 49 C F R § 1180 2(d)(5) Also enclosed are 20 unbound copies of the map required by 49 C F R § 1180 6(a)(6) and a check in the amount of \$2,400 as the filing fee pursuant to 49 C F R § 1002 2

Enclosed please find a duplicate copy of this letter to be stamped with the filing date and returned to the undersigned in the enclosed self-addressed stamped envelope

Please contact me if you have any questions

Very truly yours,

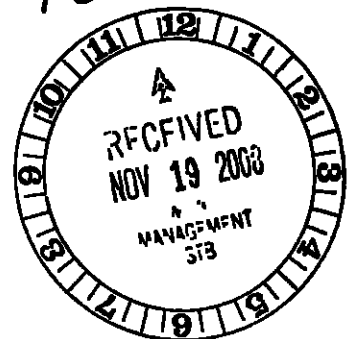
LEONARD STREET AND DEINARD

W Karl Hansen

Enclosures

cc Nathan Fenno, with enclosures

224022



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35197

DELAWARE AND HUDSON RAILWAY COMPANY, INC AND
THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION
— JOINT RELOCATION PROJECT EXEMPTION —
BINGHAMTON, NEW YORK

VERIFIED NOTICE OF EXEMPTION

ENTERED
Office of Proceedings
NOV 19 2008
Part of
Public Record

FILED
NOV 19 2008
SURFACE
TRANSPORTATION BOARD

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NOV 19 2008
SURFACE
TRANSPORTATION BOARD

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ATTORNEYS FOR DELAWARE AND
HUDSON RAILWAY COMPANY, INC

Nathan Fenno
President and Counsel
NYS&W
1 Railroad Avenue
Cooperstown, NY 13326
Tel (607) 629-2838

ATTORNEY FOR THE NEW
YORK, SUSQUEHANNA AND
WESTERN RAILWAY CORPORATION

Date November 18, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No 35197

**DELAWARE AND HUDSON RAILWAY COMPANY, INC AND
THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION
— JOINT RELOCATION PROJECT EXEMPTION —
BINGHAMTON, NEW YORK**

VERIFIED NOTICE OF EXEMPTION

Delaware and Hudson Railway Company, Inc dba Canadian Pacific ("CP") and The New York, Susquehanna and Western Railway Corporation ("NYS&W") file this Notice of Exemption pursuant to the class exemption for joint projects involving the relocation of lines of railroad as provided in 49 C F R § 1180 2(d)(5) The following information is provided as required by 49 C F R. § 1180 4(g)

Section 1180 6(a)(1)(i) Summary of the Proposed Transaction

The joint relocation project covered by this notice includes the joint use and operation over trackage in the Binghamton, New York terminal area stemming from the incidental (1) sale by CP to NYS&W of approximately 0.95 miles of track and right-of-way, (2) non-exclusive overhead trackage rights granted by NYS&W to CP, and (3) non-exclusive overhead trackage rights granted by CP to NYS&W The purpose of the project is to rationalize track usage and freight operations in the Binghamton terminal area which will enable more efficient and expeditious rail service without disruption to shippers

The joint relocation project transaction has three parts

1) The first part involves the sale to NYS&W of CP's currently out-of-service Liberty Street Main trackage and right-of-way between Point C (Norfolk Southern ("NS") milepost 214 1 +/-) and Point D (CP milepost 613 62), a distance of approximately 0.95 miles, as depicted on the map attached as Exhibit 1. NYS&W intends, and is better positioned, to make repairs, rehabilitate, and upgrade the trackage so the parties ultimately may resume operations over this segment. Prior to being taken out of service, this track doubled as the connecting track between CP's freight main line and the NS Southern Tier Line, on the one hand, and NYS&W's switching lead on the north side of its freight yard, on the other. The movement of through freight trains over this track segment seriously disrupted switching operations. This disruption will be significantly reduced as a result of the sale as through freight trains will be routed on the trackage described in part 2 below.

2) NYS&W will grant CP non-exclusive overhead trackage rights to operate over NYS&W tracks between Point A (NS milepost 214 1 +/-) and Point B (CP milepost 613 84) (the "Buffalo Runner"), between Point C (NS milepost 214 1 +/-) and Point D (CP milepost 613 62), and between Point D and Point F (CP milepost 612 77), a distance of approximately 2.56 miles, as shown on Exhibit 1.¹ These trackage rights are intended to enable CP to continue through movements from its freight main line to the NS Southern Tier Line and avoid disruption of switching operations. NYS&W has already rehabilitated the Buffalo Runner trackage between Point A and Point B to accommodate through freight movements to and from the NS Southern Tier Line, which will eliminate

¹ NYS&W's grant of trackage rights to CP incorporates the trackage rights CP previously granted to NS over the Buffalo Running Track in SIB Finance Docket No. 34209. Once this transaction is consummated, NS may also effectuate those trackage rights through the Binghamton terminal over trackage depicted on Exhibit 1 between Points A to B to D in order to further the joint relocation project's rationalization of terminal operations to better accommodate switching and through movements.

a bottleneck occurring when a train passes between NS and CP and will eliminate CP trains from blocking NYS&W access to its freight yard NYS&W will continue to operate over these segments

3) CP will grant NYS&W non-exclusive overhead trackage rights over CP tracks located between Point B (CP milepost 613.84) and Point D (CP milepost 613.62), between Point E (CP milepost 613.54) and Point G (CP milepost 612.98), between Point G and Point H (CP milepost 613.99), and between Point I (CP milepost 614.13) and Point J (CP milepost 614.30), a distance of approximately 1.96 miles, as shown on Exhibit I. These trackage rights are intended to enable NYS&W to use CP's Beaver Street Yard for operations unrelated to interchange with CP and to operate on CP's Binghamton Runner between NYS&W's Syracuse and Utica Branch on the north, NYS&W's Binghamton Yard, and NS's Southern Tier Line. CP will continue to operate over these segments.

Subject to approval of the Board, the above overhead reciprocal trackage rights will terminate ten (10) years from the effective date. Unless NYS&W or CP notifies the other in writing at least six (6) months prior to the expiration of the initial term or any successive term, the reciprocal trackage rights shall continue in full force and effect for up to three (3) successive terms of ten (10) year terms under the same terms and conditions. CP and NYS&W will operate their own trains with their own crews over the subject trackage. The trackage involved in the joint relocation project is located entirely in the State of New York.

o

Incidental trackage rights and track sale components of joint relocation projects subject to class exemptions under 49 CFR § 1180.2(d)(5) do not require separate

approval or exemption when the relocation project, as here, will not disrupt service to shippers *See Flats Indus R R Co and Norfolk S Ry Co – Joint Relocation Project Exemption – in Cleveland, OH*, STB Finance Docket No 34108 (STB served Nov 15, 2001), *Ill Cent R R Co and New Orleans Pub Belt R R – Joint Relocation Project Exemption – in New Orleans, LA*, STB Finance Docket No 33533 (STB served Jan 16, 1998)

Section 1180.6(a)(1)(i) Name, business address and telephone number of applicant, and the name of counsel to whom questions can be addressed

The name and business address of the applicants are

Delaware and Hudson Railway Company, Inc
dba Canadian Pacific
200 Clifton Corporate Parkway
Clifton Park, NY 12065
(518) 383-7207

The New York, Susquehanna and Western Railway Corporation
1 Railroad Avenue
Cooperstown, NY 13326
(607) 629-2838

Questions regarding this transaction are to be addressed to the representatives named below

W Karl Hansen
Leonard, Street and Deinard
Professional Association
150 South Fifth Street
Suite 2300
Minneapolis, MN 5502
(612) 335-7088
Counsel for Delaware and Hudson Railway Company, Inc.

Nathan Fenno
The New York, Susquehanna and Western Railway Corporation
1 Railroad Avenue
Cooperstown, NY 13326
(607) 629-2838
Counsel for The New York, Susquehanna and Western Railway Corporation

Section 1180 6(a)(1)(ii) Consummation Date

The transaction will be consummated on or immediately after the effective date of this Notice of Exemption

Section 1180 6(a)(1)(iii) Purpose of the Transaction

The purpose of the transaction is to rationalize usage of portions of CP and NYS&W rail lines in Binghamton, New York to better accommodate switching and through movements in the terminal area. The sale of CP's out-of-service Liberty Street Main trackage to NYS&W will enable NYS&W to repair, rehabilitate, and upgrade the tracks so that the parties may ultimately resume operations over this segment. The purpose of the NYS&W trackage rights are to enable NYS&W to use CP's Bevier Street Yard for operations unrelated to interchange with CP and to operate on CP's Binghamton Runner between NYS&W's Syracuse and Utica Branches, NYS&W's Binghamton Yard, and NS's Southern Tier Line. The purpose of the CP trackage rights are to enable CP to continue through movements from its freight main line to the NS Southern Tier Line. The transaction will not disrupt service to any rail shippers as CP and NYS&W will continue to have access to the Binghamton terminal area. The trackage rights will not involve an expansion of service by CP or NYS&W into a new territory, or alter the existing competitive situation. All the foregoing transactions will expedite rail service in and through the Binghamton terminal area.

Section 1180 6(a)(5) States in which the Applicants Operate

CP operates on Delaware and Hudson Railway Company lines and trackage rights in the states of New Jersey, New York, and Pennsylvania. NYS&W operates in the states of New Jersey, New York, and Pennsylvania.

Section 1180 6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

Section 1180 6(a)(7)(ii) Agreements (Exhibits 2 & 3)

The reciprocal trackage rights agreements are attached as Exhibit 2. The purchase and sale agreement and amendment are attached as Exhibit 3.

Section 1180 4(g)(1)(i) Labor Protection

Employees adversely affected by the trackage rights component of this transaction are entitled to protection under the conditions imposed in *Norfolk and W Ry Co -- Trackage Rights -- Burlington N, Inc*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry, Inc -- Lease and Operate -- Cal W R R*, 360 I.C.C. 653 (1980)

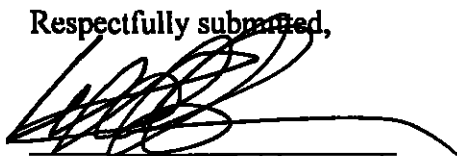
Section 1180.4(g)(2)(i) Caption Summary (Exhibit 4)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 4.

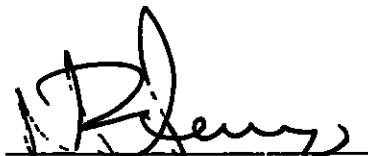
Section 1180 4(g)(3) Environmental and Historical Documentation

Environmental and historical documentation are not required for this transaction. As provided in 49 C.F.R. § 1105.6(c)(4) and 49 C.F.R. § 1105.8(b)(3), the trackage sale, trackage rights, and common use of rail terminals involved in the proposed relocation do not require preparation of environmental and historical reports and documentation.

Respectfully submitted,



W. Karl Hansen
Leonard, Street and Deinard
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Tel (612) 335-7088



Nathan Fenno, President
NYS&W
1 Railroad Avenue
Cooperstown, NY 13326
Tel (607) 629-2838

VERIFICATION

STATE OF MINNESOTA

C E Hubbard, being duly sworn, deposes and says that he has read the foregoing Notice of Exemption and that the contents thereof are true and correct to the best of his knowledge and belief


C E Hubbard

Subscribed and sworn to before me this 17th day of November, 2008


Notary Public

My Commission expires
Jan 31, 2011

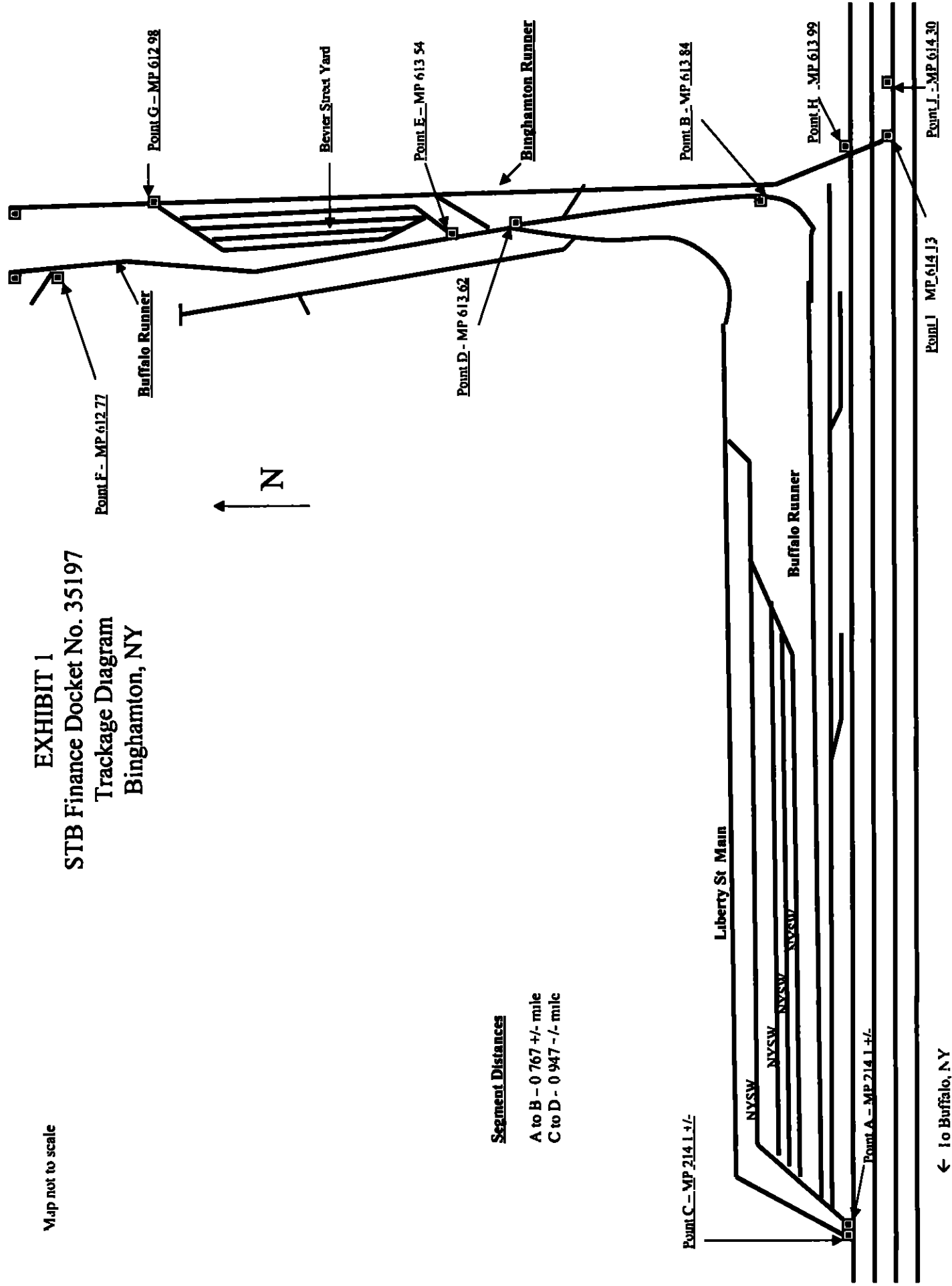


EXHIBIT 1

Map

EXHIBIT 1 STB Finance Docket No. 35197 Trackage Diagram Binghamton, NY

Map not to scale



← to Buffalo, NY

EXHIBIT 2
Trackage Rights Agreements

**THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION /
CANADIAN PACIFIC TRACKAGE RIGHTS AGREEMENT, BINGHAMTON, NEW YORK
NYS&W GRANT TO CP**

THIS TRACKAGE RIGHTS AGREEMENT dated October 24, 2008 by and between The New York, Susquehanna and Western Railway Corporation, 1 Railroad Avenue, Cooperstown, New York 13326 ("NYS&W"), and Delaware and Hudson Railway Company, Inc , 200 Clifton Corporate Parkway, P O. Box 8002, Clifton Park, New York 12065, d/b/a Canadian Pacific, ("CP"); sometimes individually referred to below as "the Party" and sometimes collectively referred to below as "the Parties."

RECITALS

A Consolidated Rail Corporation ("ConRail") and the Delaware and Hudson Railway Company executed a trackage rights agreement dated September 8, 1980, ("Base Agreement") providing for the terms and conditions whereby certain operating rights were granted to ConRail in the area Binghamton, NY.

B As a result of the sale by ConRail to NYS&W of certain rail lines to the north of Binghamton, NY, and the granting by ConRail to NYS&W of certain trackage rights, NYSW became a successor in interest to certain trackage rights in the Binghamton, NY area included in the Base Agreement.

C. NYS&W and D&H Corporation are parties to a Terminal Agreement dated April 1, 1991 ("Terminal Agreement") governing certain rail operations in and around Binghamton, NY as more specifically set forth therein.

D. CP is the successor in interest to Delaware and Hudson Railway Company and D&H Corporation.

E. The Parties executed a Memorandum of Agreement ("MOA") that along with defining obligations for roadway reconfiguration in the Terminal, provides terms and conditions for continued use of terminal trackage as more specifically set forth therein.

F. The Parties desire to memorialize a trackage rights agreement ("TRA") to be filed with the Surface Transportation Board ("STB") which sets forth the terms and conditions by which CP shall use the NYS&W lines in Binghamton, New York more specifically set forth herein

NOW, THEREFORE, in consideration of the mutual promises and the other good and valuable considerations set forth herein, it is agreed by the Parties as follows.

Section 1. GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided NYS&W hereby grants to CP the non-exclusive right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "Trackage Rights") over trackage owned and/or operated by NYS&W (hereinafter referred to as "Joint Line"), as described in Section 1.2 below Except as specifically provided for elsewhere in this Agreement, the Trackage Rights granted herein are for the sole purpose of operating trains, locomotives, cars and equipment in the account of CP with CP's crews in overhead bridge service (including trains operated by CP in haulage service and pursuant to detour agreements with other carriers), and as provided hereinafter, by Norfolk Southern Railway ("NS") pursuant to trackage rights granted by CP prior to the date of this Agreement, all of which shall be considered trains in the account of CP (all hereafter the "CP Trains") All CP Trains shall be subject to the restrictions outlined in Section 2 below.

1.2 Attached to, incorporated in and made a part of this Agreement is Exhibit A dated October 1, 2008, which shows the Joint Line between the points designated as Point "A" (Buffalo Runner track connection with the NS Southern Tier at NS mp 214.1+/-) to Point "B" (mp 613.84 of the Buffalo Runner track); between Point "C" (Liberty Street Main connection

the NS Southern Tier at NS mp 214.1+/- to Point "D" (Old BX at mp 613.62); and between Point "D" to Point "F" (mp 612.77 of the Buffalo Runner at Port Dick). The Joint Line includes all of NYS&W's track connections, facilities and appurtenances, signals and switches located between these points, as such facilities and appurtenances, signals and switches are from time to time added to, modified, or removed at the sole discretion of NYS&W. Except as may be provided for herein it is understood that the Joint Line will not include NYS&W's freight rail yards

1.3 For the purpose of this Agreement, the Joint Line will be divided into three separate segments. (1) trackage between Points A to B ("Segment 1"), (2) trackage between Points C to D ("Segment 2"), and (3) trackage between Point D to Point F ("Segment 3").

1.4 To continue the operative effect of the overhead trackage rights granted by CP to NS in the agreement filed and exempted in STB Finance Docket No. 34209, CP may authorize utilization of those trackage rights on Segment 1, Segment 2, and Segment 3 of the Joint Line.

Section 2. RESTRICTIONS ON USE

2.1 The Trackage Rights granted herein are for overhead freight traffic only. CP shall not have the right, except as otherwise provided for within this Agreement, to:

(a) Set off, pick up, or store equipment or switch industries upon all or any part of the Joint Line, except as necessary for the handling of locomotives, cars or cabooses bad ordered en route, or

(b) Serve any industry, team or house track now existing or hereinafter located along the Joint Line; or

(c) Except as specifically provided in Section 1.4, permit or admit, without permission in writing from NYS&W, any third party to the use of all or any part of the Joint Line, other than Norfolk Southern Railway, its successors and assigns, pursuant to various trackage and operating rights over the Joint Line that CP has granted prior to the first day written above; or

(d) Construct tracks connecting to the Joint Line without the express written consent of NYS&W; or

(e) Interchange with any carrier along the Joint Line, except that CP may conduct interchange operations with the Norfolk Southern or its successors and assigns upon the Joint Line, or

(f) Enter or Exit the Joint Line at any point on the Joint Line except as shown on Exhibit A

Section 3. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

3.1 Existing connections or facilities, which are jointly used by the Parties hereto under existing agreements, shall continue to be maintained, repaired and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair and renewal under such agreements.

3.2 If, in the opinion of CP, a new or upgraded connection is required at the point of permitted entry or exit, or, if in the opinion of CP, other upgrading, including but not limited to capacity capital, switches, power switches, signals, communications and other related track material is required for the operational efficiency, then CP shall submit a written request to NYS&W to perform such work and NYS&W may at its sole discretion construct the additional or altered facilities along or to the Joint Line CP shall be responsible for the funding such construction/upgrade at actual cost plus customary additives, unless otherwise mutually

agreed to by NYS&W and CP.

Section 4. MAINTAINING PARTY / CONTROLLING PARTY DEFINED

4.1 For the purpose of this Agreement the Party responsible for maintenance obligations outlined in this Agreement ("Maintaining Party") shall be as defined below;

Segment 1 – NYS&W

Segment 2 – NYS&W

Segment 3 - CP

4.2 For the purpose of this Agreement the Party responsible for operating obligations outlined in this Agreement ("Controlling Party") shall be as defined below,

Segment 1 – CP

Segment 2 – NYS&W

Segment 3 – CP

Section 5. MAINTENANCE OF JOINT LINE

5.1 The Maintaining Party shall maintain, repair and renew or caused to be maintained, repaired and renewed, its segment(s) of the Joint Line with its own supervision and labor forces. The Maintaining Party shall keep and maintain or cause to keep and maintain its segment(s) of the Joint Line in reasonably good condition for the use herein contemplated, but the Maintaining Party does not guarantee the conditions of its segment(s) of the Joint Line nor that operations thereover will not be interrupted. Notwithstanding the previous sentence, NYSW shall maintain Segment 1 at FRA Class 1 standards with a 286,000 pound capacity along with vertical clearance for double-stack movements. The Maintaining Party shall take all reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions. Furthermore, except as may be

otherwise provided in Section 13, neither Party shall by reason of failure or neglect on the part of the Maintaining Party to maintain, repair or renew the Joint Line, have or make any claim or demand against the non-maintaining Party or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for any nature suffered by the non-maintaining Party resulting from such failure or neglect.

Section 6. ADDITIONS, BETTERMENTS AND ALTERATIONS

6.1 The Maintaining Party may, from time to time at its sole cost and expense, make changes in, additions and betterments to or retirements from its segment(s) of the Joint Line as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions shall become part of the Joint Line as the case may be and such retirements shall be excluded therefrom.

6.2 In the event of changes in or additions and betterments to the Joint Line including changes in the communication or signal facilities, are requested by non-maintaining Party to accommodate its operations beyond that required by Maintaining Party to accommodate its operations, then the Maintaining Party may at its sole discretion construct the additional or altered facilities along or to its segment(s) of the Joint Line. The non-maintaining Party shall be responsible for funding such construction/upgrade at actual cost plus customary additives, unless otherwise mutually agreed to between the Parties.

Section 7. OPERATION AND MANAGEMENT OF JOINT LINE

7.1 The management and operation of the Joint Line shall be under the exclusive direction and control of the Controlling Party. The trains, locomotives, cars and equipment of NYS&W,

CP and any other present or future user of the Joint Line or any portion thereof shall be operated without prejudice or partiality to any party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.

7.2 Each Party shall comply with the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment or trains, locomotives, cars and equipment under its control while such trains, locomotives, cars and equipment are being operated over the Joint Line. Notwithstanding any other provisions herein, Each Party shall indemnify, protect, defend, and save harmless the other Party and its subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon such other Party or its subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court of competent jurisdiction, when attributable solely to the failure of the Party to comply with its obligations in this regard

7.3 When operating over the Joint Line, the Parties' locomotives and crews shall be equipped to communicate with the operators of the segments of Joint Line on radio frequencies then normally used in directing train movements on the Joint Line. The Parties' locomotives shall be adequately powered to maintain the maximum authorized freight speeds as provided by Controlling Party's operating rules, and equipped with such cab signals, Locomotive Speed Limiter and other safety equipment that is required by law or instruction for the operation over any or all of the Joint Line.

7.4 Each Party, at its sole expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment or devices, including but not limited to EOT's with functioning telemetry, as may now or in the future be mandated by the Federal Railroad Administration, or other governing body having authority, for the safe and efficient operation

of trains over the Joint Line.

7.5 The operation of the Parties over the Joint Line shall at all times be in accordance with the safety and operating rules, instructions and restrictions of the Controlling Party, provided, however, that such rules, instructions and restrictions shall be reasonable, just and fair between all parties using the Joint Line and shall not unjustly discriminate against any of them. These rules and instructions shall include, but not be limited to, operating and safety rules, timetables, special instructions, bulletins, general orders and authoritative directions of train dispatchers and operating officers. Other than those restrictions provided for herein, the Controlling Party will not make any rule or restriction applying to the non-controlling Party's trains that does not apply with equal force to the Controlling Party's trains.

7.6 The Parties' trains while operating over the Joint Line shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Joint Line as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by the Controlling Party's operating rules and regulations without the prior consent of the Controlling Party.

7.7 In the event that a train of non-controlling Party shall be forced to stop on the Joint Line due to mechanical failure of the non-controlling Party's equipment or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of non-controlling Party fails to maintain the speed required by the Controlling Party on the Joint Line, or if in emergencies, crippled or otherwise defective cars are set out of non-controlling Party's trains on the Joint Line, the Controlling Party shall have the option to furnish motive power or such other assistance as may be necessary to crew, haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Joint Line, and the non-controlling Party shall reimburse the Controlling Party for the actual cost of rendering any such assistance.

7.8 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Joint Line, the Controlling Party shall have the option of performing such work and the non-controlling Party shall reimburse the Controlling Party for the cost thereof

7.9 All employees of the non-controlling Party engaged in the operation of its trains over the Joint Line shall be required to qualify for entry onto the Joint Line by passing periodic examinations on the operating and safety rules of the Controlling Party in addition to the physical characteristics of the Joint Line. The non-controlling Party shall make such arrangements with the Controlling Party as may be required to ensure that all of its employees who shall operate its trains, locomotives, cars and equipment over the Joint Line are qualified for operation thereover, and the non-controlling Party shall pay to the Controlling Party, upon receipt of bills therefore, any and all costs incurred by the Controlling Party in connection with the qualification of such employees of the non-controlling Party which may include, but are not limited to, those costs addressed in Section 9 of this Agreement including the cost of pilots furnished by the Controlling Party, until such time as such employees are deemed by the appropriate examining officer of the Controlling Party to be properly qualified for operation as herein contemplated. The Controlling Party may require that such qualification trips be repeated if the subject non-controlling Party employee has not made a trip over the Joint Line within a reasonable period of preceding time, but only to the same extent as would be required of the Controlling Party's own employees. Pending qualification or requalification of subject employees, the Controlling Party shall furnish a pilot or pilots, at the expense of non-controlling Party, to allow operation as contemplated in this Agreement. For purposes of Section 15 of this Agreement, any employee of the Controlling Party acting as a pilot for the non-controlling Party will be considered an employee of the non-controlling Party

7.10 Subject to Section 7.13 below, if any employee of the non-controlling Party, neglects,

refuses or fails to abide by the Controlling Party's rules, safety rules, instructions or restrictions governing the operation over the Joint Line, the Controlling Party shall in writing so notify the non-controlling Party. The Controlling Party shall have the right to require the non-controlling Party to promptly withhold any such non-controlling Party employee from service over the Joint Line pending the result of formal investigation of the alleged neglect, refusal or failure. After the notice is given to non-controlling Party, the Controlling Party and the non-controlling Party shall promptly hold a joint investigation, in which each of the Parties shall bear its own expenses for its own employees and witnesses. Notice of such investigation to the non-controlling Party employees shall be given by the non-controlling Party's officer. The investigation shall be conducted in accordance with the terms and conditions of the agreements between the non-controlling Party and its employees. If the result of such investigation warrants, any subject non-controlling Party employee so investigated shall upon written request by the Controlling Party be restricted by the non-controlling Party from operating on the Joint Line, and the non-controlling Party shall release and indemnify the Controlling Party from and against any and all claims and expenses related to such restriction, provided, however, that the Controlling Party shall not unreasonably exercise this right of restriction.

7.11 Neither Party hereto shall require the other Party's crews to perform any work beyond that required by its current labor agreements, subject to any modifications that may result from future labor agreements, while said crews are on the other Party's property and/or subject to the other Party's supervision. Should either Party require the other Party's crews to perform additional services over and above that contemplated herein, which results in penalty claims being progressed, that Party shall reimburse the other Party for the cost of all such claims. It is agreed that the Party subject to the claims shall notify the other Party of such claims so that the movement(s) causing the claim(s) can be corrected to avoid liability.

7 12 To promote more efficient train operations over the Joint Line, CP and NYS&W operating managers shall meet periodically to discuss train schedules and any operational issues that have arisen. In addition, each Party will provide the other with advance notice of additions to or changes to train schedules, and the parties shall meet to discuss any issues raised by such changes. The non-controlling Party shall communicate with the Controlling Party's dispatcher or other designated official on a daily basis to discuss estimated time of arrival of trains to promote efficient train operations.

7 13 It is expressly understood between the Parties that CP acting in the capacity of the Controlling Party for Segment 1 and Segment 3 under this Agreement shall not have the right to withhold any such NYS&W employee from service over Segment 1 and Segment 3 pending the result of formal investigation of the alleged neglect, refusal or failure to abide by the rules, safety rules, instructions or restrictions governing the operation over the Segment 1 and Segment 3

Section 8. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in CP's trains on the Joint Line shall be assumed by CP and reported and paid by CP.

Section 9. BAD ORDERS AND LIGHT RUNNING REPAIRS

If any cars, cabooses, or locomotives of CP are bad ordered en route on the Joint Line and it is necessary that they be set out, those cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by CP. NYS&W may, upon request of CP and at the exclusive expense of CP, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the Association of American Railroads, furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted

pursuant to, the Field and Office Manuals of the Interchange Rules of the Association of American Railroads.

Section 10. BILLING AND PAYMENT OF CHARGES

10.1 Except as specifically provided for elsewhere in the Agreement, there shall be no compensation required for CP's use and operation over the Joint Line, provided however, that NYS&W is exercising its rights to operate over CP trackage under a separate reciprocal trackage rights agreement dated on an even date herewith. In the event NYS&W discontinues its operation over the CP pursuant to such separate reciprocal trackage rights agreement, the Parties shall meet and develop an equitable charge for NYS&W to invoice CP for the use of the Joint Line. If after ninety (90) days the Parties cannot agree to a trackage rights fee this issue may be submitted to arbitration pursuant to Section 20 herein.

10.2 It is expressly understood and agreed that the payments described in this Section 9 to be paid by CP do not, in any case, include any cost or expense which may be incurred by NYS&W on account of loss of or damage to property, or injury to or death of any person or persons arising out of, or in connection with, the operation by CP upon or over the Joint Line. It is agreed by and between the Parties that such items of cost or expense shall be borne and paid by the Parties according to the provisions of Section 11 and 13 hereof.

10.3 All monthly bills rendered pursuant to the provisions of this Agreement shall include invoiced expense plus direct labor and material costs, together with the customary surcharges, overhead percentages and equipment rentals as specified at the time any work is performed.

10.4 The payment of bills shall not be delayed or payment refused or reduced on the face amount of bill rendered because of errors in supporting details which are not material relative to the billed amount, but the bill shall be paid as rendered and exception to charges shall be

taken in writing addressed to the officer of NYS&W responsible for the issuance of the bill; provided that no exception to any charge shall be honored, recognized or considered if filed after the expiration of one (1) year from the last day of the calendar month during which the bill containing said charge was rendered

10.5 CP shall maintain complete and accurate records applicable to its use of the Joint Line under this Agreement and such records shall be open to inspection by representatives of NYS&W upon reasonable notice during regular office hours.

Section 11. INDEMNIFICATION AND CASUALTY

11.1 The Parties, shall forever defend, indemnify and hold harmless each other, its parents and affiliates, and their respective officers, agents, representatives and employees (collectively the "Indemnified Parties") from and against any and all liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments of whatever kind or nature, known or unknown, contingent or otherwise (a) relating to or arising from any and all liens and encumbrances which may be filed or recorded against the Joint Line or any lien filed against any funds of any of the Indemnified Parties as a result of actions taken by or on behalf of CP, its contractors, subcontractors, agents, representatives, employees, guests or invitees, or (b) arising out of, or resulting from the presence, storage, transportation, disposal, release or threatened release of any Hazardous Materials (as hereinafter defined) over, under, in, on, from or affecting the Joint Line or any persons, real property, personal property, or natural substances thereon or affected thereby during the term of this Agreement, to the extent said presence, disposal, release or threatened release is the result of any act(s) or omission(s) of CP or CP's employees, guests, contractors, subcontractors, representatives or agents. For the purpose of this paragraph "Hazardous Materials" means (i) any "hazardous" waste as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601 et seq., or (ii) "hazardous materials" as defined under the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., or (iii)

“hazardous substance” as defined under the Clean Water Act, 33 U S C Section 1321 et seq., or (iv) asbestos, or (v) polychlorinated biphenyls.

Each party shall provide written notice to the other Party of the receipt of any notice of any claim or threatened claim, and provide to the other Party a copy of the notice, any additional or other documents provided by the person making the claim, and any response to the claim. For any claim under this Section 11.1, CP shall have the sole duty to defend or respond to any claim, and to take all actions required by applicable law, ordinance or governmental rule, regulation or order to respond to any such claim or the events leading to such a claim, all at its sole and exclusive cost. Subject to taking all actions necessary to maintain any applicable privilege, CP shall promptly provide NYS&W its parent and affiliates, with a copy of all studies, expert reports, and other documents related to such claim, and shall consult with NYS&W its parent and affiliates concerning any response. NYS&W its parent and affiliate may be represented at their own expense in a proceeding related to the claim by counsel or other representative, and CP (and its agents, consultants and counsel) shall cooperate with NYS&W its parent and affiliates regarding such participation.

11.2 Without limiting the foregoing Section 11.1, in addition to notifying the appropriate police and other agencies, CP shall promptly report to NYS&W any FRA reportable accident/incident or crime which arises in connection with the Joint Line. CP will comply with all rules and regulations issued by the FRA and other agencies concerning the reporting of accidents/incidents.

Section 12. INSURANCE

12.1 CP, at its sole cost and expense, shall take out and keep in full force and effect and pay all premiums for, throughout the term and during such other time as this Agreement remains in force, the following insurances.

(a) Commercial General Liability (C.G.L.) or Railroad Liability insurance covering the activities conducted by CP. Such policies shall have inclusive limits of not less than Twenty-five Million Dollars (\$25,000,000) for each occurrence with a maximum deductible of Two Hundred Fifty Thousand Dollars (\$250,000) involving bodily injury, death or property damage. In the event CP handles a Poison Inhalation Hazard / Toxic Inhalation Hazard ("PIH/TIH") commodity defined in the Federal Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq. and the regulations of the Secretary of Transportation issued thereunder at 49 C.F.R. Parts 171, 172 and 173, over the Joint Line it shall provide NYS&W with evidence of such C.G.L. insurance policy covering these activities. This policy shall have inclusive limits of not less than Fifty Million Dollars (\$50,000,000). Either policy shall by its wording or by endorsement include but not be limited to the following.

- (i) name NYS&W and its associated or affiliated companies (and the directors, officers, employees, agents and trustees of all of the foregoing) as an additional insured with respect to obligations of CP's operation under this Agreement and incidental thereto;**
- (ii) NYS&W and its associated or affiliated companies (and the directors, officers, employees, agents, and trustees of all of the foregoing) shall be waived of any and all subrogation in the event of damages, losses, incidents, claims and potential claims;**
- (iii) "cross liability" or "severability of interest" clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;**
- (iv) blanket contractual liability, to include the insurable liabilities herein assumed by CP;**

(v) products and completed operations,

(vi) Include coverage for accidental discharge of Hazardous Materials in the conduct of CP's operations;

(vii) insure against all Federal Employer's Liability Act claims for liability arising out of CP's operation provided for in the Agreement, and.

(viii) sudden and accidental pollution, or named perils pollution including the release or dispersal of pollutants as a result of a collision, overturning or derailment of any vehicle or railway rolling stock

(b) (Intentionally Omitted).

(c) Insuring against loss or liability in connection with property damage on or in the vicinity of the Joint Line. Any damages to the property of NYS&W in the care, custody, or control of CP which consists solely of the railroad track infrastructure on the Joint Line, or for which CP has assumed liability will be the responsibility of CP subject to the indemnity.

12.2 CP agrees to ensure full continuity of coverage for claims made policies during the term of this Agreement including purchase of any tail policies required to ensure coverage for losses that may have occurred but not discovered until 10 years after the closure or termination of this agreement. CP further agrees to immediately give written notice to the NYS&W of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company for incidents that occurred on the Joint Line.

12.3 At any time not less than sixty (60) days prior to an anniversary date of this Agreement, NYS&W, in consideration of current and reasonably anticipated claims and

litigation costs against CP, may notify CP of NYS&W's intent to increase the amount of insurance required by this Agreement or to require that the terms and conditions of such insurance be modified. Should CP object to any such increase or modification, CP and NYS&W will attempt in good faith to negotiate a resolution of their disagreement. If CP and NYS&W are not able to agree and such disagreement continues for thirty (30) days past the anniversary date of this Agreement, then the matter or matters in disagreement will be submitted to Arbitration pursuant to Section 17 hereof.

12.4 Each policy of insurance obtained by CP pursuant to the requirements of this Section will contain provisions requiring that the insurance carrier give NYS&W, at least thirty (60) days notice in writing of any proposed policy cancellation or any modification of the terms and conditions of any policy of insurance CP is required to provide under this Section.

12.5 The terms and conditions of each policy of insurance obtained by CP to satisfy the requirements of this Section will be subject to the approval of NYS&W. At least thirty (30) days prior to the effective date of this Agreement, CP will furnish to NYS&W, an accurate copy of each policy of Insurance obtained pursuant to the requirements of this Section. Neither compliance with this requirement nor NYS&W's approval of the terms and conditions of any such policy will in any way limit or modify the obligation of CP to provide the specific insurance coverage required by this Section. Further, in the event the said policy(s) is allowed to lapse during the term hereof or any renewal thereof, this Agreement shall, at NYS&W's option and subject to all its rights and privileges, notwithstanding any other clause herein, be forthwith terminated upon five (5) days advance written notice being given to CP.

12.6 It is further provided and agreed that any Insurance coverage acquired hereunder by CP will in no manner restrict or limit the liabilities assumed by CP hereunder

12.7 If CP fails to maintain the insurance required under this Agreement, NYS&W may at its option terminate this Operating Agreement.

12.8 Notwithstanding anything to the contrary in this Agreement, NYS&W agrees to accept, in lieu of any or all of the insurance required above, a written undertaking in form reasonably acceptable to NYS&W by Canadian Pacific Railway Company to respond as an insurer of its subsidiary CP. CP shall comply annually by providing evidence of such undertaking in accordance with Section 12.5.

Section 13. CLAIMS AND SETTLEMENTS

13.1 Except as expressly provided elsewhere in this Agreement, all claims, injuries, deaths, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the Party bearing the liability, cost and expense therefore under the provisions of this Agreement. The Parties shall be bound by the Freight Claim Rules, Principles and Practices of the AAR as to the handling of any claims for the loss or damage to lading

13.2 Each Party will investigate, adjust and defend all cargo related liability claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against one of the Parties hereto which is the other Party's duty hereunder to investigate, adjust or defend, then unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.

13.4 All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth herein, except that salaries or wages of full-time claim agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly

in such work shall be borne by the employing Party

13.5 Excluding cargo related liability claims filed in accordance with 49 U.S.C. Section 11706 or 49 C F R Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Fifty Thousand Dollars (\$50,000).

13.6 It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions or apportionments provided in Section 14.

13.7 Each Party hereto agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of labor claims or grievances made by or on behalf of its own employees. Further, it is the intention of the Parties that each Party shall bear the full costs of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

Section 14. CLEARING OF WRECKS

14.1 Whenever the non-maintaining Party's use of the Joint Line requires rerailing, wrecking service or wrecking train service, the Maintaining Party shall perform or provide such service, including the repair and restoration of roadbed, track and structures, except that the Maintaining Party in its sole discretion may request a third party to perform such rerailing service at the non-maintaining Party's sole reasonable expense.

14.2 The cost, liability and expense of the foregoing, including without limitation loss of,

damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Sections 12 and 14 hereof. All locomotives, cars, equipment and salvage that are owned by or under the management and control of or used at the time of such wreck, shall be promptly delivered to the derailing Party, unless the Parties otherwise agree.

Section 15. LIABILITY

15.1 The responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Joint Line as described herein, all of which are collectively referred to as a "Loss", will be divided as follows:

(a) If a Loss occurs on the Joint Line involving the trains, cars and locomotives of only one of the Parties hereto, then that one Party is solely responsible for the Loss, even if caused partially or completely by the another Party.

(b) If a Loss occurs on the Joint Line involving the trains, cars and locomotives of more than one Party, then (i) each Party is solely responsible for any Loss to its own employees, locomotives and equipment and that in its own revenue account including lading and (ii) the Parties are equally responsible for any Loss to the Joint Line and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

(c) For purposes of assigning responsibility of a Loss under this Section as between the Parties hereto, a Loss involving one of the Parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one Party to this Agreement

(d) Whenever any liability, cost, or expense is assumed by or apportioned to a Party hereto under the foregoing or succeeding provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party to this Agreement and their parent corporations, subsidiaries and affiliates, and all of its respective directors, officers, agents and employees from and against that liability, cost and expense assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers, agents, or employees

(e) In every case of death or injury suffered by an employee of any Party hereto, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and any of said Parties, under the provisions of this Agreement, are required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party (ies) shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) For purposes of determining liability, pilots furnished by the Controlling Party to the non-controlling Party pursuant to this Agreement shall be considered as the employees of the Controlling Party while such pilots are on duty as pilots

(g) If a claim or suit shall be commenced against any of the Parties hereto for Damage for which another Party hereto is ultimately liable, the Party sued or against whom the claim is asserted may give notice of such claim or suit to the other Party and thereupon

the latter shall assume the defense of the claim or suit and save harmless therefrom the Party sued or against whom the claim is asserted. The Party liable hereunder shall also be responsible and indemnify the other Party for all costs and expenses associated with defending the claim or suit (excluding the salaries, wages and benefits of the Parties' employees), including reasonable outside attorneys' fees. Where both Parties are liable hereunder, each Party shall bear its own costs and expenses associated with defending the claim or suit.

15.2 Notwithstanding any and all of the forgoing provisions of this Section 15, in the event a Loss occurs while the Joint Line is being used by CP and/or NYS&W, and such Loss is attributable solely to the willful or wanton negligence of only one of the Parties to this Agreement, then the Party hereto which was so willfully or wantonly negligent shall be solely responsible for such Loss.

15.3 For the purpose of assigning responsibility for Loss to or destruction of any property whatsoever or injury or death of any person or persons whomever, for this Section 15 as between the Parties hereto, the trains, locomotives, cars and equipment of a railroad not a party to this Agreement ("Third Party Railroad") shall be considered to be the trains, locomotives, cars and equipment of the Party who granted the Third Party Railroad such rights.

Section 16. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of CP to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from NYS&W, NYS&W shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by NYS&W of any prior breach thereof, to terminate the Trackage Rights and CP's use of the Joint Line. The exercise of such rights by NYS&W shall not impair its rights under

this Agreement or any cause or causes of action it may have against CP for the recovery of damages.

Section 17. REGULATORY APPROVAL

17.1 Should this Agreement require the prior approval of the Surface Transportation Board ("STB"), the Parties shall equally share the cost and expense of said filing and CP will initiate and thereafter diligently pursue an appropriate application of petition to secure such approval

17.2 CP shall assume and hold NYS&W harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the Parties hereunder, where such claims are predicated on labor protective conditions imposed by the Surface Transportation Board or its predecessor

Section 18. ABANDONMENT AND DISCONTINUANCE OF JOINT LINE

18.1 CP shall have the right, subject to securing any necessary regulatory approval, to discontinue its use of the Joint Line or any portion thereof. NYS&W shall have the right, subject to securing any necessary regulatory approval, to abandon its use of the Joint Line or any portion thereof. Before filing an application for regulatory approval of such abandonment, NYS&W shall give CP ninety (90) days' advance notice in writing of its intention to do so in order that CP may determine whether it desires to purchase the Joint Line (or portion thereof) or to discontinue its use thereof.

18.2 If CP desires to purchase the Joint Line, it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of 49 U.S.C. Section 10904 and NYS&W receives more than one such offer, NYS&W will exercise its statutory right to negotiate with CP rather than with the other offer(s). Thereafter, the rights and obligations of the parties in respect to CP's acquisition of the Joint Line shall be

governed by applicable provisions of the law.

18.3 In any one of the circumstances listed below CP shall be deemed to have determined that it does not desire to purchase the Joint Line and that it desires to discontinue its use thereof:

(a) CP fails to submit an offer of financial assistance to purchase the Joint Line within the time prescribed by statute and applicable regulations, or

(b) CP, having made an offer of financial assistance to purchase the Joint Line, but being unable to reach agreement with NYS&W as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or

(c) CP, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or

(d) CP, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event CP shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Joint Line. If CP does not promptly file an application seeking approval of its discontinuance of CP's operations over the Joint Line, NYS&W shall be deemed to have been given CP's power of attorney to take such action on CP's behalf

18.4 In the event any application filed by NYS&W is granted but an application filed by CP under Section 18.2 above is denied by the proper regulatory authority, the Parties shall

cooperate in taking such action as is reasonably necessary to effect a sale of the Joint Line to CP (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.

18.5 In the event NYS&W abandons the Joint Line (or portion thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the Parties shall cooperate and take such action as is necessary to assure that CP either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.

18.6 In the event NYS&W's application for authority to abandon is denied, CP will withdraw any application it has filed under Section 18.2 above.

18.7 Except as otherwise expressly agreed in writing, in the event any actions taken by the Parties under this Section 18 result in an obligation imposed by any competent authority on any Party hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the Party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

Section 19. TERM

19.1 This Agreement shall be effective the day and the year first written above or, in the event STB approval is required, on the effective date such is secured and shall remain in full force and effect for an initial term of ten years. Unless NYS&W or CP notifies the other in writing at least six (6) months prior to the expiration of the initial term, or any successive term, this Agreement shall continue in full force and effect for three (3) successive terms of ten (10) year terms under the same terms and conditions.

19.2 Termination of this Agreement shall not relieve or release any Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by any Party under the terms of this Agreement prior to the termination hereof

19.3 Should this Agreement not be renewed beyond the initial term or any successive term, CP shall be responsible for the filing of discontinuance of the rights granted herein with the STB and any other applicable regulatory authorities.

Section 20. ARBITRATION

Any irreconcilable dispute arising between the Parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the Parties hereto. Each Party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, cost and expense of the arbitrator, if any, shall be borne equally by the Parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws

Section 21. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto. CP shall not transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of NYS&W, which consent shall not be unreasonably withheld if assignment or transfer is to a successor of CP's operations north of the Joint Line and/or east of the Joint Line. Any assignment shall not be effective until such time as the assignee agrees, in writing, to be bound by all terms and conditions of this Agreement,

including but not limited to Section 1 2.

Section 22. NOTICES

22.1 Except as may be otherwise provided in this Agreement or as may be otherwise mutually agreed to by the parties hereto from time to time, any and all notices or other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by certified mail, postage prepaid, upon the date so personally delivered or on the second day of uninterrupted postal service following the date so mailed, and shall be addressed to the persons at the following addresses:

To NYSW The New York, Susquehanna and Western Railway Corporation

**1 Railroad Avenue
Cooperstown, NY 13326
Attn: President**

With a copy to:

**The New York, Susquehanna and Western Railway Corporation
1 Railroad Avenue
Cooperstown, NY 13326
Attn: General Counsel**

**To CPR: Director-Interline Management
Canadian Pacific Railway
401 9th Avenue SW
Gulf Canada Square, Suite 500
Calgary, AB T2P 4Z4**

**With a copy to:
Manager – Interline Agreements
501 Marquette Avenue South
Suite 1525
Minneapolis, MN 55402**

22.2 Either Party to this Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other party to this Agreement, in the same manner as provided above for all other written notices.

Section 23. AFFECT ON OTHER AGREEMENTS

All existing understandings and agreements between the Parties hereto, or their predecessors, relating to matters included herein, are hereby abrogated and made void except that neither Parties hereto shall be released from any liability which may have arisen under agreements and understandings in effect prior to the date of execution of this Agreement. Subject understandings include but are not limited to;

(a) Consolidated Rail Corporation ("ConRail") and the Delaware and Hudson Railway Company executed a trackage rights agreement dated September 8, 1980, ("Base Agreement") providing for the terms and conditions whereby certain operating rights were granted to both Parties in the area of Scranton, PA and Binghamton, NY, to the extent that NYSW is a successor in interest of ConRail under such Base Agreement

Section 24. SPECIAL CONTROL PROVISIONS

Notwithstanding any other provision of this Agreement, if NYS&W deems its trains have become unnecessarily delayed when operating between Point F (Port Dick at mp 612.77 +/-) and Point D (BX at mp 613.62 +/-) (Segment 3), then NYS&W will submit a written grievance to CP. CP will have 30 days to respond to the grievance. If the response does not satisfy NYS&W, NYS&W will submit written notification of change of control of train movements on Segment 3 such that NYS&W shall become the Controlling Party for Segment 3. The change in control of train movement will become effective within 15 days of receipt of such notification by CP. In the event NYS&W exercises such right to control train movements over the Buffalo Runner between Point F (Port Dick at mp 612.77 +/-) and Point D (BX at mp

613.62 +/-) then CP shall be entitled to control train movements over the Liberty Street Main between Point D (BX at mp 613.62) and Point M (Robinson Street at mp 613.84 +/-).

Section 25. GOVERNING LAW

It is the intention of the Parties hereto that the laws of the State of New York shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Parties' hereto

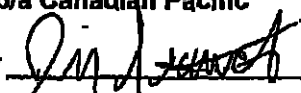
Section 26. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

DELAWARE AND HUDSON
RAILWAY COMPANY, INC.
d/b/a Canadian Pacific

By



Its Director, Interline Management

Date OCTOBER 27, 2008

THE NEW YORK, SUSQUEHANNA
AND WESTERN RAILWAY
CORPORATION

By



Its

PRESIDENT

Date October 24, 2008

EXHIBIT A – October 1, 2008 Trackage Diagram Binghamton, NY.

Locations off the Buffalo Runner

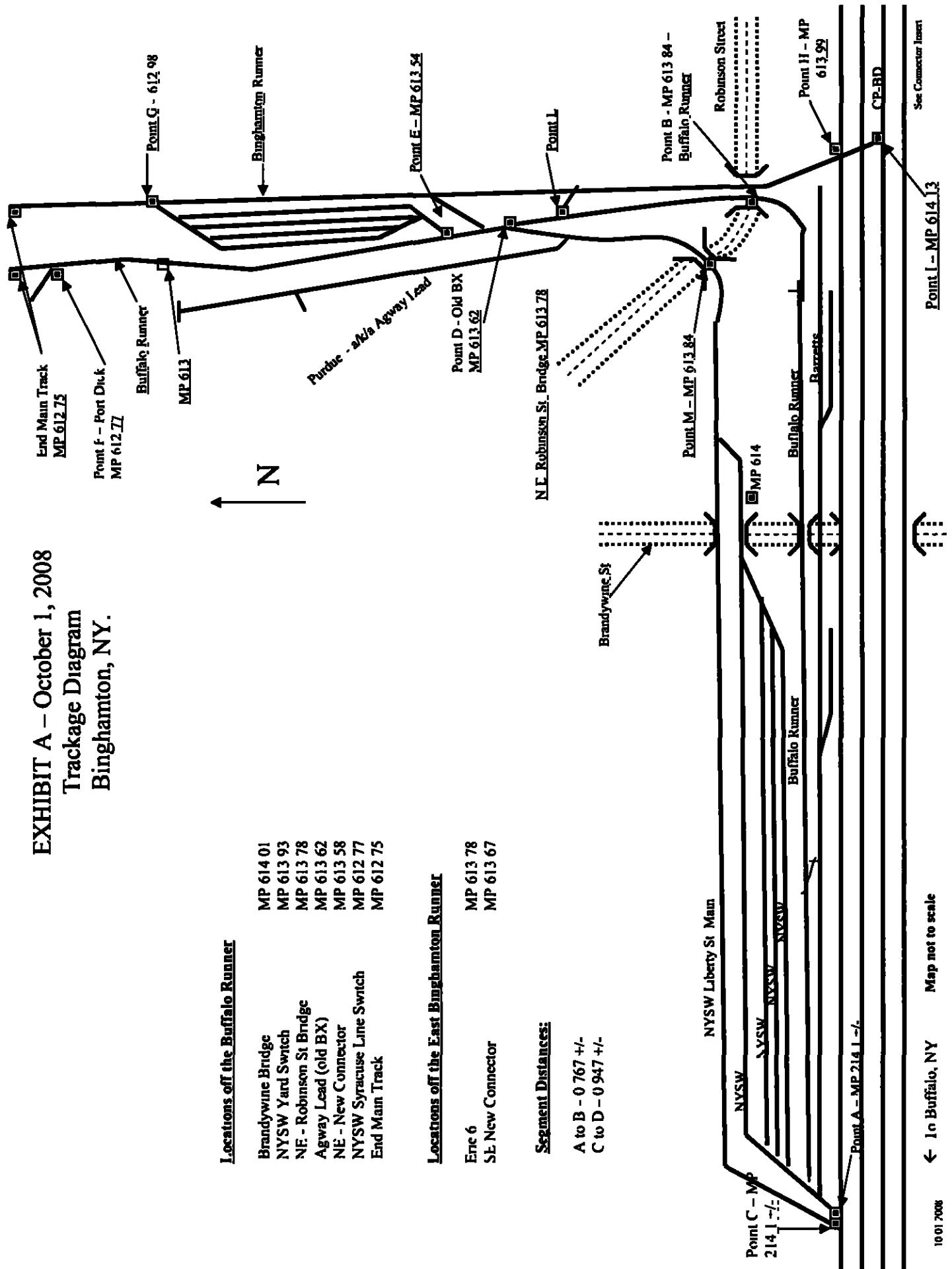
Brandywine Bridge	MP 614 01
NYSW Yard Switch	MP 613 93
NE - Robinson St Bridge	MP 613 78
Agway Lead (old BX)	MP 613 62
NE - New Connector	MP 613 58
NYSW Syracuse Line Switch	MP 612 77
End Main Track	MP 612 75

Locations off the East Binghamton Runner

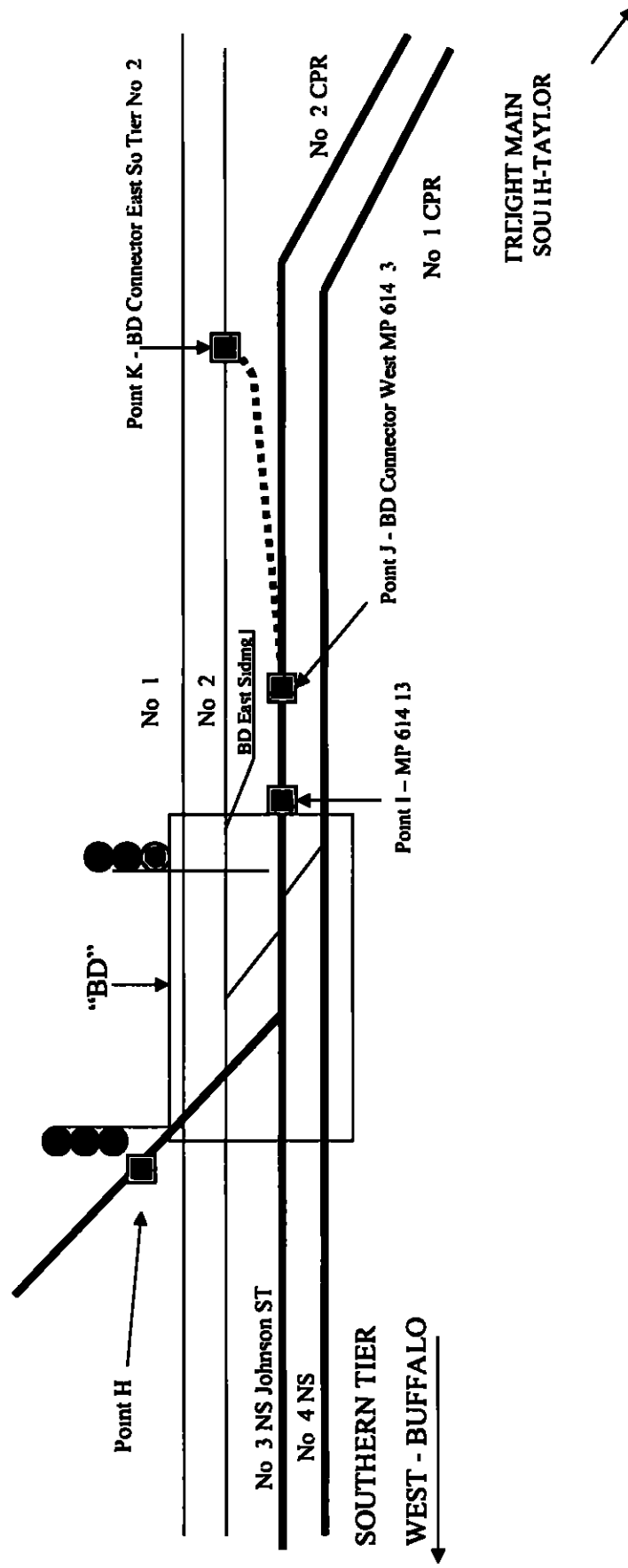
Erie 6	MP 613 78
SE New Connector	MP 613 67

Segment Distances:

A to B - 0 767 +/-
C to D - 0 947 +/-



October 1, 2008



**THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION /
CANADIAN PACIFIC TRACKAGE RIGHTS AGREEMENT, BINGHAMTON, NEW YORK
CP GRANT TO NYS&W**

THIS TRACKAGE RIGHTS AGREEMENT dated October 24, 2008 by and between The New York, Susquehanna and Western Railway Corporation, 1 Railroad Avenue, Cooperstown, New York 13326 ("NYS&W"), and Delaware and Hudson Railway Company, Inc., 200 Clifton Corporate Parkway, P.O. Box 8002, Clifton Park, New York 12065, d/b/a Canadian Pacific, ("CP"); sometimes individually referred to below as "the Party" and sometimes collectively referred to below as "the Parties."

RECITALS:

A Consolidated Rail Corporation ("ConRail") and the Delaware and Hudson Railway Company executed a trackage rights agreement dated September 8, 1980, ("Base Agreement") providing for the terms and conditions whereby certain operating rights were granted to ConRail in the area Binghamton, NY

B. As a result of the sale by ConRail to NYS&W of certain rail lines to the north of Binghamton, NY, and the granting by ConRail to NYS&W of certain trackage rights, NYS&W became a successor in interest to certain trackage rights in the Binghamton, NY area included in the Base Agreement

C. Conrail and Delaware and Hudson Railway Company ("D&H") executed an Interlocking Agreement dated September 8, 1980 ("BD Interlocking Agreement") governing Conrail's operation and maintenance of the "BD" Interlocking in Binghamton, NY at the sole cost and expense of D&H.

D. NYS&W and D&H Corporation are parties to a Terminal Agreement dated April 1, 1991 ("Terminal Agreement") governing certain rail operations in and around Binghamton, NY as more specifically set forth therein

E. Norfolk Southern Railway Company ("NS") is the successor in interest to ConRail's rail lines in the Binghamton, NY area, including but not limited to the Base Agreement and the BD Interlocking Agreement.

F. CP is the successor in interest to Delaware and Hudson Railway Company and D&H Corporation

G The Parties executed a Memorandum of Agreement ("MOA") that along with defining obligations for roadway reconfiguration in the Terminal, provides terms and conditions for continued use of terminal trackage as more specifically set forth therein.

H. The Parties entered into a letter agreement dated May 9, 2005 ("Letter") surrounding the construction of a new connection between the Norfolk Southern's Southern Tier #2 main and CP's #2 Runner in the vicinity of CPBD ("New CPBD Connection") and setting forth requirements to be met by the Parties prior to NYS&W's use of the New CPBD Connection all pursuant to the terms and conditions and as more specifically set forth therein

I. Pursuant to a letter agreement dated May 27, 2005 ("Limited Waiver") CP temporarily lifted the restriction set forth in the Letter regarding NYS&W's commencement of the use of the New CPBD Connection all pursuant to the terms and conditions and as more specifically set forth therein

J. The Parties desire to memorialize a trackage rights agreement ("TRA") to be filed with the Surface Transportation Board ("STB") which sets forth the terms and conditions by which NYS&W shall use the CP line in Binghamton, New York more specifically set forth herein

NOW, THEREFORE, in consideration of the mutual promises and the other good and valuable considerations set forth herein, it is agreed by the Parties as follows:

Section 1. GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided CP hereby grants to NYS&W the non-exclusive right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "Trackage Rights") over trackage owned and operated by CP (hereinafter referred to as "Joint Line"), as described in Section 1.2 below. Trackage rights granted herein are for the sole purpose of operating trains, locomotives, cars and equipment in the account of NYS&W with NYS&W's crews in overhead bridge service, including trains operated by NYS&W in haulage service and pursuant to detour agreements with other carriers shall be considered trains in the account of NYS&W (all hereafter the "NYS&W Trains"). All NYS&W Trains shall be subject to the restrictions outlined in Section 2 below

1.2 Attached to, incorporated in and made a part of this Agreement is Exhibit A dated October 1, 2008, which shows the Joint Line between the points designated as Point "E" (Buffalo Runner track connection with Bevier Street Yard at mp 613.54) to Point "G" (Bevier Street Yard connection with the Binghamton Runner at mp 612.98); Point "B" at mp 613.84 to Point "D" (Old BX at mp 613.62 on the Buffalo Runner); Point "G" on the Binghamton Runner to Point "H" at mp 613.99; and Point "I" (BD connection with CP #2 Runner at mp 614.13) to Point "J" (BD Connector-West at mp 614.3). The Joint Line includes all of CP's track connections, facilities and appurtenances, signals and switches located between these points, as such facilities and appurtenances, signals and switches are from time to time added to, modified, or removed at the sole discretion of CP. Segment definitions shall include the necessary headroom/tailroom as reasonably required by NYS&W for safe and efficient operations which shall generally not exceed one train's length. Except as expressly provided for herein it is understood that the Joint Line will not include CP's freight rail yards

1.3 NYS&W may set off or pick up rail equipment in CP's Bevier Street Yard identified between Point E to Point G on Exhibit A.

Section 2. RESTRICTIONS ON USE

2.1 The Trackage Rights granted herein are for overhead freight traffic only. NYS&W shall not have the right, except as otherwise provided for within this Agreement, to

(a) Set off, pick up, or store equipment or switch industries upon all or any part of the Joint Line, except as necessary for the handling of locomotives, cars or cabooses bad ordered en route; or

(b) Serve any industry, team or house track now existing or hereinafter located along the Joint Line; or

(c) (Permit or admit, without permission in writing from CP, any third party to the use of all or any part of the Joint Line; or

(d) Construct tracks connecting to the Joint Line without the express written consent of CP, or

(e) Interchange with any carner along the Joint Line; or

(f) Enter or Exit the Joint Line at any point on the Joint Line except as shown on Exhibit A.

2.2 NYS&W shall not use line segments between Point D to Point H, Point G to H or Point I to Point J for freight rail traffic that originates or terminates in Canada that had a previous or subsequent movement over CSXT's Montreal Secondary on the one hand, and interchange with CSXT in the New Jersey metropolitan area on the other hand ("Prohibited Traffic").

2.3 Notwithstanding anything to the contrary, in the event NYS&W operates Prohibited Traffic over line segments defined in Section 2.2 above, CP shall assess NYS&W and NYS&W

shall pay CP a fee in the amount of \$1,500.00 per car, not as a penalty but as liquidated damages for violation of Section 2.2 and depriving CP of freight revenue producing traffic.

Section 3. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

3.1 Existing connections or facilities, which are jointly used by the Parties hereto under existing agreements, shall continue to be maintained, repaired and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair and renewal under such agreements.

3.2 If, in the opinion of NYS&W, a new or upgraded connection is required at the point of permitted entry or exit, or, if in the opinion of NYS&W, other upgrading, including but not limited to capacity capital, switches, power switches, signals, communications and other related track material is required for the operational efficiency, then NYS&W shall submit a written request to CP to perform such work and CP may at its sole discretion construct the additional or altered facilities along or to the Joint Line. NYS&W shall be responsible for the funding such construction/upgrade at actual cost plus customary additives, unless otherwise mutually agreed to by NYS&W and CP

3.3 CP shall perform all maintenance, repair and renewal of the New CPBD Connection located upon CP's property, at the sole cost and expense of NYS&W and CP shall invoice NYS&W pursuant to Section 9 of this Agreement for the costs of such maintenance, repair and renewal.

Section 4. MAINTENANCE OF JOINT LINE

4.1 Other than trackage within the CPBD interlocker covered by the BD Interlocking Agreement, CP shall maintain, repair and renew or caused to be maintained, repaired and renewed, the Joint Line with its own supervision and labor forces. CP shall keep and maintain

or cause to keep and maintain the Joint Line in reasonably good condition for the use herein contemplated, but CP does not guarantee the conditions of the Joint Line or that operations thereover will not be interrupted. CP shall take all reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions. Furthermore, except as may be otherwise provided in Section 13, NYS&W shall not by reason of failure or neglect on the part of CP to maintain, repair or renew the Joint Line, have or make any claim or demand against CP or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for any nature suffered by NYS&W resulting from such failure or neglect.

4.2 Under terms of the BD Interlocking Agreement NS shall maintain, repair, renew and operate the facility within CPBD Interlocker. NYS&W shall not by reason of failure or neglect on the part of NS to maintain, repair, renew or operate CPBD Interlocker, have or make any claim or demand against CP or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for any nature suffered by NYS&W resulting from such failure or neglect.

4.3 NYS&W shall be responsible for the funding of its Allocation as defined in Section 4.3(a) below of the costs invoiced by NS to CP for the maintenance, repair, renewal and operation, including operator's wages of said interlocking including the cost of electricity required for the operation for the CPBD interlocker.

(a) Allocation shall mean each Party's proportion of scheduled north/south road trains traversing CPBD as compared to total (NYS&W, CP and third party railroads) scheduled north/south road trains traversing CPBD for one calendar month. Effective with the date first written above it is understood between the Parties that NYS&W operates six (6) road trains

over CPBD as compared to the total number of scheduled north/south train road trains of fifty-two (52) operating through CPBD.

(b) If at any time six (6) months or greater after the execution of this Agreement, and thereafter not more frequently than once per calendar year, should either Party believes that the Allocation of costs defined in Section 4.3 above does not accurately reflect their usage of CPBD then such Party by giving to the other Party thirty (30) days written notice may request a modification to the Allocation provided for in Section 4.3(a). Upon receipt of such request, the Parties shall meet and revise the Allocation to reflect current use of CPBD. Any revision to the Allocation shall be limited to a prospective basis.

Section 5. ADDITIONS, BETTERMENTS AND ALTERATIONS

5.1 CP may, from time to time at its sole cost and expense, make changes in, additions and betterments to or retirements from the Joint Line as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions shall become part of the Joint Line and such retirements shall be excluded from the Joint Line.

5.2 In the event of changes in or additions and betterments to the Joint Line, including changes in the communication or signal facilities, are requested by NYS&W to accommodate NYS&W's operations beyond that required by CP to accommodate its operations, then CP may at its sole discretion construct the additional or altered facilities along or to the Joint Line. NYS&W shall be responsible for the funding such construction/upgrade at actual cost plus customary additives, unless otherwise mutually agreed to by NYS&W and CP.

Section 6. OPERATION AND MANAGEMENT OF JOINT LINE

6.1 The management and operation of the Joint Line shall be under the exclusive direction and control of CP. The trains, locomotives, cars and equipment of CP, NYS&W and any other present or future user of the Joint Line or any portion thereof shall be operated without prejudice or partiality to any party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.

6.2 Each Party shall comply with the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment or trains, locomotives, cars and equipment under its control while such trains, locomotives, cars and equipment are being operated over the Joint Line. Notwithstanding any other provisions herein, Each Party shall indemnify, protect, defend, and save harmless the other Party and its subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon such other Party or its subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court of competent jurisdiction, when attributable solely to the failure of the Party to comply with its obligations in this regard.

6.3 When operating Trackage Rights traffic over the Joint Line, NYS&W's locomotives and crews shall be equipped to communicate with the operators of the segments of Joint Line on radio frequencies then normally used in directing train movements on the Joint Line. NYS&W's locomotives shall be adequately powered to maintain the maximum authorized freight speeds as provided by CP's operating rules, and equipped with such cab signals, Locomotive Speed Limiter and other safety equipment that is required by law or instruction for the operation over any or all of the Joint Line.

6.4 NYS&W, at its sole expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment or devices, including but not limited to EOT's with functioning telemetry, as may now or in the future be mandated by the Federal Railroad Administration, or other governing body having authority, for the safe and efficient operation of trains over the Joint Line.

6.5 The operation of NYS&W over the Joint Line, shall at all times be in accordance with the safety and operating rules, instructions and restrictions of CP, provided, however, that such rules, instructions and restrictions shall be reasonable, just and fair between all parties using the Joint Line and shall not unjustly discriminate against any of them. These rules and instructions shall include, but not be limited to, operating and safety rules, timetables, special instructions, bulletins, general orders and authoritative directions of train dispatchers and operating officers. Other than those restrictions provided for herein, CP will not make any rule or restriction applying to NYS&W's trains that does not apply with equal force to CP's trains

6.6 NYS&W trains while operating over the Joint Line shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Joint Line as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CP's operating rules and regulations without the prior consent of CP.

6.7 In the event that a train of NYS&W shall be forced to stop on the Joint Line due to mechanical failure of NYS&W's equipment or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of NYS&W fails to maintain the speed required by CP on the Joint Line, or if in emergencies, crippled or otherwise defective cars are set out of NYS&W's trains on the Joint Line, CP shall have the option to furnish motive power or such other assistance as may be necessary to crew, haul, help or push such

trains, locomotives or cars, or to properly move the disabled equipment off the Joint Line, and NYS&W shall reimburse CP for the actual cost of rendering any such assistance.

6.8 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Joint Line, CP shall have the option of performing such work and NYS&W shall reimburse CP for the cost thereof.

6.9 All employees of NYS&W engaged in the operation of NYS&W trains over the Joint Line shall be required to qualify for entry onto the Joint Line by passing periodic examinations on the operating and safety rules of CP in addition to the physical characteristics of the Joint Line. NYS&W shall make such arrangements with CP as may be required to ensure that all of its employees who shall operate its trains, locomotives, cars and equipment over the Joint Line are qualified for operation thereover, and NYS&W shall pay to CP, upon receipt of bills therefore, any and all costs incurred by CP in connection with the qualification of such employees of NYS&W which may include, but are not limited to, those costs addressed in Section 9 of this Agreement including the cost of pilots furnished by CP, until such time as such employees are deemed by the appropriate examining officer of CP to be properly qualified for operation as herein contemplated. CP may require that such qualification trips be repeated if the subject NYS&W employee has not made a trip over the Joint Line within a reasonable period of preceding time, but only to the same extent as would be required of CP's own employees. Pending qualification or requalification of subject employees, CP shall furnish a pilot or pilots, at the expense of NYS&W, to allow operation as contemplated in this Agreement. For purposes of Section 15 of this Agreement, any employee of CP acting as a pilot for NYS&W will be considered an employee of NYS&W.

6.10 If any employee of NYS&W, neglects, refuses or fails to abide by CP's rules, safety rules, instructions or restrictions governing the operation over the Joint Line, CP shall in writing so notify NYS&W. CP shall have the right to require NYS&W to promptly withhold any such

NYS&W employee from service over the Joint Line pending the result of formal investigation of the alleged neglect, refusal or failure. After the notice is given to NYS&W, CP and NYS&W shall promptly hold a joint investigation, in which each of the Parties shall bear its own expenses for its own employees and witnesses. Notice of such investigation to NYS&W employees shall be given by NYS&W officers. The investigation shall be conducted in accordance with the terms and conditions of the agreements between NYS&W and its employees. If the result of such investigation warrants, any subject NYS&W employee so investigated shall upon written request by CP, be restricted by NYS&W from operating on the Joint Line, and NYS&W shall release and indemnify CP from and against any and all claims and expenses related to such restriction, provided, however, that CP shall not unreasonably exercise this right of restriction.

6.11 Neither Party hereto shall require the other Party's crews to perform any work beyond that required by its current labor agreements, subject to any modifications that may result from future labor agreements, while said crews are on the other Party's property and/or subject to the other Party's supervision. Should either Party require the other Party's crews to perform additional services over and above that contemplated herein, which results in penalty claims being progressed, that Party shall reimburse the other Party for the cost of all such claims. It is agreed that the Party subject to the claims shall notify the other Party of such claims so that the movement(s) causing the claim(s) can be corrected to avoid liability.

6.12 To promote more efficient train operations over the Joint Line, NYS&W and CP operating managers shall meet periodically to discuss train schedules and any operational issues that have arisen. In addition, each party will provide the other with advance notice of additions to or changes to train schedules, and the parties shall meet to discuss any issues raised by such changes. NYS&W shall communicate with CP's dispatcher or other designated official on a daily basis to discuss estimated time of arrival of trains to promote efficient train operations.

Section 7. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in NYS&W's trains on the Joint Line shall be assumed by NYS&W and reported and paid by NYS&W.

Section 8. BAD ORDERS AND LIGHT RUNNING REPAIRS

If any cars, cabooses, or locomotives of NYS&W are bad ordered en route on the Joint Line and it is necessary that they be set out, those cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by NYS&W. CP may, upon request of NYS&W and at the exclusive expense of NYS&W, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the Association of American Railroads, furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the Association of American Railroads

Section 9. BILLING AND PAYMENT OF CHARGES

9.1 Except as specifically provided for elsewhere in the Agreement, there shall be no compensation required for NYS&W's use and operation over the Joint Line, provided however, that CP is exercising its rights to operate over NYS&W trackage under a separate reciprocal trackage rights agreement dated on an even date herewith. In the event CP discontinues its operation over the NYS&W pursuant to Section 9.1, the Parties shall meet and develop an equitable charge for CP to invoice NYS&W for the use of the Joint Line. If after ninety (90) days the Parties cannot agree to a trackage rights fee this issue may be submitted to arbitration pursuant to Section 19 herein.

9.2 It is expressly understood and agreed that the payments described in this Section 9 to be paid by NYS&W do not, in any case, include any cost or expense which may be incurred by CP on account of loss of or damage to property, or injury to or death of any person or persons arising out of, or in connection with, the operation by NYS&W upon or over the Joint Line. It is agreed by and between the Parties that such items of cost or expense shall be borne and paid by the Parties according to the provision of Section 14 hereof.

9.3 All monthly bills rendered pursuant to the provisions of this Agreement shall include invoiced expense plus direct labor and material costs, together with the customary surcharges, overhead percentages and equipment rentals as specified at the time any work is performed..

9.4 The payment of bills shall not be delayed or payment refused or reduced on the face amount of bill rendered because of errors in supporting details which are not material relative to the billed amount, but bill shall be paid as rendered and exception to charges shall be taken in writing addressed to the officer of CP responsible for the issuance of the bill, provided that no exception to any charge shall be honored, recognized or considered if filed after the expiration of one (1) year from the last day of the calendar month during which the bill containing said charge was rendered

9.5 NYS&W shall maintain complete and accurate records applicable to its use of the Joint Line under this Agreement and such records shall be open to inspection by representatives of CP upon reasonable notice during regular office hours

Section 10. INDEMNIFICATION AND CASUALTY

10.1 The Parties, shall forever defend, indemnify and hold harmless each other, its parents and affiliates, and their respective officers, agents, representatives and employees (collectively the "Indemnified Parties") from and against any and all liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments of whatever kind or nature,

known or unknown, contingent or otherwise (a) relating to or arising from any and all liens and encumbrances which may be filed or recorded against the Joint Line or any lien filed against any funds of any of the Indemnified Parties as a result of actions taken by or on behalf of NYS&W, its contractors, subcontractors, agents, representatives, employees, guests or invitees, or (b) arising out of, or resulting from the presence, storage, transportation, disposal, release or threatened release of any Hazardous Materials (as hereinafter defined) over, under, in , on, from or affecting the Joint Line or any persons, real property, personal property, or natural substances thereon or affected thereby during the term of this Agreement, to the extent said presence, disposal, release or threatened release is the result of any act(s) or omission(s) of NYS&W or NYS&W's employees, guests, contractors, subcontractors, representatives or agents. For the purpose of this paragraph "Hazardous Materials" means (i) any "hazardous" waste as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601 et seq., or (ii) "hazardous materials" as defined under the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., or (iii) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq., or (iv) asbestos, or (v) polychlorinated biphenyls.

Each party shall provide written notice to the other Party of the receipt of any notice of any claim or threatened claim, and provide to the other Party a copy of the notice, any additional or other documents provided by the person making the claim, and any response to the claim. For any claim under this Section 10.1, NYS&W shall have the sole duty to defend or respond to any claim, and to take all actions required by applicable law, ordinance or governmental rule, regulation or order to respond to any such claim or the events leading to such a claim, all at its sole and exclusive cost. Subject to taking all actions necessary to maintain any applicable privilege, NYS&W shall promptly provide CP its parent and affiliates, with a copy of all studies, expert reports, and other documents related to such claim, and shall consult with CP its parent and affiliates concerning any response. CP its parent and affiliate may be represented at their own expense in a proceeding related to the claim by counsel or other representative, and

NYS&W (and its agents, consultants and counsel) shall cooperate with CP its parent and affiliates regarding such participation.

10.2 Without limiting the foregoing Section 10.1, in addition to notifying the appropriate police and other agencies, NYS&W shall promptly report to CP any FRA reportable accident/incident or crime which arises in connection with the Joint Line. NYS&W will comply with all rules and regulations issued by the FRA and other agencies concerning the reporting of accidents/incidents.

Section 11. INSURANCE

11.1 NYS&W, at its sole cost and expense, shall take out and keep in full force and effect and pay all premiums for, throughout the term and during such other time as this Agreement remains in force, the following Insurances:

(a) **Commercial General Liability (C G.L.) or Railroad Liability** insurance covering the activities conducted by NYS&W. Such policies shall have inclusive limits of not less than Twenty-five Million Dollars (\$25,000,000) for each occurrence with a maximum deductible of Two Hundred Fifty Thousand Dollars (\$250,000) involving bodily injury, death or property damage. In the event NYS&W handles a Poison Inhalation Hazard / Toxic Inhalation Hazard ("PIH/TIH") commodity defined in the Federal Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et. seq. and the regulations of the Secretary of Transportation issued thereunder at 49 C.F.R. Parts 171, 172 and 173, over the Joint Line it shall provide CP with evidence of such C.G.L. insurance policy covering these activities. This policy shall have inclusive limits of not less than Fifty Million Dollars (\$50,000,000). Either policy shall by its wording or by endorsement include but not be limited to the following:

- (i) name CP and its associated or affiliated companies (and the directors, officers, employees, agents and trustees of all of the foregoing) as an

additional insured with respect to obligations of NYS&W's operation under this Agreement and incidental thereto;

- (ii) CP and its associated or affiliated companies (and the directors, officers, employees, agents, and trustees of all of the foregoing) shall be waived of any and all subrogation in the event of damages, losses, incidents, claims and potential claims;**
 - (iii) "cross liability" or "severability of interest" clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each,**
 - (iv) blanket contractual liability, to include the insurable liabilities herein assumed by NYS&W;**
 - (v) products and completed operations,**
 - (vi) include coverage for accidental discharge of Hazardous Materials in the conduct of NYS&W's operations;**
 - (vii) insure against all Federal Employer's Liability Act claims for liability arising out of NYS&W's operation provided for in the Agreement, and.**
 - (viii) sudden and accidental pollution, or named perils pollution including the release or dispersal of pollutants as a result of a collision, overturning or derailment of any vehicle or railway rolling stock**
- (b) (Intentionally Omitted).**

(c) Insuring against loss or liability in connection with property damage on or in the vicinity of the Joint Line. Any damages to the property of CP in the care, custody, or control of NYS&W which consists solely of the railroad track infrastructure on the Joint Line, or for which NYS&W has assumed liability will be the responsibility of NYS&W subject to the indemnity.

11.2 NYS&W agrees to ensure full continuity of coverage for claims made policies during the term of this Agreement including purchase of any tail policies required to ensure coverage for losses that may have occurred but not discovered until 10 years after the closure or termination of this agreement. NYS&W further agrees to immediately give written notice to the Director of Risk Management, Gulf Canada Square, 401 - 9th Avenue SW, Calgary, Alberta T2P 4Z4, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company for incidents that occurred on the Joint Line.

11.3 At any time not less than sixty (60) days prior to an anniversary date of this Agreement, CP, in consideration of current and reasonably anticipated claims and litigation costs against NYS&W, may notify NYS&W of CP's intent to increase the amount of insurance required by this Agreement or to require that the terms and conditions of such insurance be modified. Should NYS&W object to any such increase or modification, NYS&W and CP will attempt in good faith to negotiate a resolution of their disagreement. If NYS&W and CP are not able to agree and such disagreement continues for thirty (30) days past the anniversary date of this Agreement, then the matter or matters in disagreement will be submitted to Arbitration pursuant to Section 17 hereof

11.4 Each policy of insurance obtained by NYS&W pursuant to the requirements of this Section will contain provisions requiring that the insurance carrier give CP, through the Director Risk Management of CP, at least thirty (60) days notice in writing of any proposed policy cancellation or any modification of the terms and conditions of any policy of insurance NYS&W is required to provide under this Section.

11.5 The terms and conditions of each policy of insurance obtained by NYS&W to satisfy the requirements of this Section will be subject to the approval of CP. At least thirty (30) days prior to the effective date of this Agreement, NYS&W will furnish to CP's Director of Risk Management, an accurate copy of each policy of insurance obtained pursuant to the requirements of this Section. Neither compliance with this requirement nor CP's approval of the terms and conditions of any such policy will in any way limit or modify the obligation of NYS&W to provide the specific insurance coverage required by this Section. Further, in the event the said policy(s) is allowed to lapse during the term hereof or any renewal thereof, this Agreement shall, at CP's option and subject to all its rights and privileges, notwithstanding any other clause herein, be forthwith terminated upon five (5) days advance written notice being given to NYS&W.

11.6 It is further provided and agreed that any insurance coverage acquired hereunder by NYS&W will in no manner restrict or limit the liabilities assumed by NYS&W hereunder.

11.7 If NYS&W fails to maintain the insurance required under this Agreement, CP may at its option terminate this Operating Agreement.

Section 12. CLAIMS AND SETTLEMENTS

12.1 Except as expressly provided elsewhere in this Agreement, all claims, injuries, deaths, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the Party bearing the liability, cost and expense therefore under the provisions of this Agreement. The Parties shall be bound by the Freight Claim Rules, Principles and Practices of the AAR as to the handling of any claims for the loss or damage to lading

12.2 Each Party will investigate, adjust and defend all cargo related liability claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.

12.3 In the event a claim or suit is asserted against one of the Parties hereto which is the other Party's duty hereunder to investigate, adjust or defend, then unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.

12.4 All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth herein, except that salaries or wages of full-time claim agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by the employing Party

12.5 Excluding cargo related liability claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Fifty Thousand Dollars (\$50,000).

12.6 It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions or apportionments provided in Section 14.

12.7 Each Party hereto agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of labor claims or grievances

made by or on behalf of its own employees. Further, it is the intention of the Parties that each Party shall bear the full costs of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

Section 13. CLEARING OF WRECKS

13.1 Whenever NYS&W's use of the Joint Line requires rerailing, wrecking service or wrecking train service, CP shall perform or provide such service, including the repair and restoration of roadbed, track and structures, except that CP in its sole discretion may request a third party to perform such rerailing service at NYS&W's sole reasonable expense.

13.2 The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Sections 12 and 14 hereof. All locomotives, cars, equipment and salvage that are owned by or under the management and control of or used by NYS&W at the time of such wreck, shall be promptly delivered to NYS&W, unless the Parties otherwise agree.

Section 14. LIABILITY

14.1 The responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Joint Line as described herein, all of which are collectively referred to as a "Loss", will be divided as follows:

(a) If a Loss occurs on the Joint Line involving the trains, cars and locomotives of only one of the Parties hereto, then that one Party is solely responsible for the Loss, even if caused partially or completely by the another Party.

(b) If a Loss occurs on the Joint Line involving the trains, cars and locomotives of more than one Party, then (i) each Party is solely responsible for any Loss to its own employees, locomotives and equipment and that in its own revenue account including lading and (ii) the Parties are equally responsible for any Loss to the Joint Line and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

(c) For purposes of assigning responsibility of a Loss under this Section as between the Parties hereto, a Loss involving one of the Parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one Party to this Agreement.

(d) Whenever any liability, cost, or expense is assumed by or apportioned to a Party hereto under the foregoing or succeeding provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party to this Agreement and their parent corporations, subsidiaries and affiliates, and all of its respective directors, officers, agents and employees from and against that liability, cost and expense assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers, agents, or employees.

(e) In every case of death or injury suffered by an employee of any Party hereto, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and any of said Parties, under the provisions of this Agreement, are required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party (ies) shall not be released from paying any such future installments by reason of the expiration

or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) For purposes of determining liability, pilots furnished by CP to NYS&W pursuant to this Agreement shall be considered as the employees of NYS&W while such pilots are on duty as pilots.

(g) If a claim or suit shall be commenced against any of the Parties hereto for Damage for which another Party hereto is ultimately liable, the Party sued or against whom the claim is asserted may give notice of such claim or suit to the other Party and thereupon the latter shall assume the defense of the claim or suit and save harmless therefrom the Party sued or against whom the claim is asserted. The Party liable hereunder shall also be responsible and indemnify the other Party for all costs and expenses associated with defending the claim or suit (excluding the salaries, wages and benefits of the Parties' employees), including reasonable outside attorneys' fees. Where both Parties are liable hereunder, each Party shall bear its own costs and expenses associated with defending the claim or suit.

14.2 Notwithstanding any and all of the forgoing provisions of this Section 14, in the event a Loss occurs while the Joint Line is being used by NYS&W and/or CP, and such Loss is attributable solely to the willful or wanton negligence of only one of the Parties to this Agreement, then the Party hereto which was so willfully or wantonly negligent shall be solely responsible for such Loss.

Section 15. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of NYS&W to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from CP, CP shall have the right at its option, after first giving

thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by CP of any prior breach thereof, to terminate the Trackage Rights and NYS&W's use of the Joint Line. The exercise of such rights by CP shall not impair its rights under this Agreement or any cause or causes of action it may have against NYS&W for the recovery of damages

Section 16. REGULATORY APPROVAL

16.1 Should this Agreement require the prior approval of the Surface Transportation Board ("STB"), the Parties shall equally share the cost and expense of said filing and CP will initiate and thereafter diligently pursue an appropriate application of petition to secure such approval.

16.2 NYS&W shall assume and hold CP harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the Parties hereunder, where such claims are predicated on labor protective conditions imposed by the Surface Transportation Board or its predecessor.

Section 17. ABANDONMENT AND DISCONTINUANCE OF JOINT LINE

17.1 NYS&W shall have the right, subject to securing any necessary regulatory approval, to discontinue its use of the Joint Line or any portion thereof. CP shall have the right, subject to securing any necessary regulatory approval, to abandon its use of the Joint Line or any portion thereof. Before filing an application for regulatory approval of such abandonment, CP shall give NYS&W ninety (90) days' advance notice in writing of its intention to do so in order that NYS&W may determine whether it desires to purchase the Joint Line (or portion thereof) or to discontinue its use thereof.

17.2 If NYS&W desires to purchase the Joint Line, it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of 49 U.S.C. Section 10904 and CP receives more than one such offer, CP will exercise its

statutory right to negotiate with NYS&W rather than with the other offer(s). Thereafter, the rights and obligations of the parties in respect to NYS&W's acquisition of the Joint Line shall be governed by applicable provisions of the law.

17.3 In any one of the circumstances listed below NYS&W shall be deemed to have determined that it does not desire to purchase the Joint Line and that it desires to discontinue its use thereof:

- (i) NYS&W fails to submit an offer of financial assistance to purchase the Joint Line within the time prescribed by statute and applicable regulations, or**
- (ii) NYS&W, having made an offer of financial assistance to purchase the Joint Line, but being unable to reach agreement with CP as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or**
- (iii) NYS&W, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or**
- (iv) NYS&W, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.**

In such event NYS&W shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Joint Line. If NYS&W does not promptly file an application seeking approval of its discontinuance of NYS&W's operations over the Joint Line, CP shall be deemed to have been given NYS&W's power of attorney to take such action on NYS&W's behalf.

17.4 In the event any application filed by CP is granted but an application filed by NYS&W under Section 17.2 above is denied by the proper regulatory authority, the Parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Joint Line to NYS&W (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904

17.5 In the event CP abandons the Joint Line (or portion thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the Parties shall cooperate and take such action as is necessary to assure that NYS&W either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U S C Section 10904 as interpreted on the date of this Agreement.

17.6 In the event CP's application for authority to abandon is denied, NYS&W will withdraw any application it has filed under Section 17.2 above.

17.7 Except as otherwise expressly agreed in writing, in the event any actions taken by the Parties under this Section 17 result in an obligation imposed by any competent authority on any Party hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the Party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

Section 18. TERM

18.1 This Agreement shall be effective the day and the year first written above or, in the event STB approval is required, on the effective date such is secured and shall remain in full force and effect for an initial term of ten years. Unless CP or NYS&W notifies the other in writing at least six (6) months prior to the expiration of the initial term, or any successive term,

this Agreement shall continue in full force and effect for three (3) successive terms of ten (10) year terms under the same terms and conditions.

18.2 Termination of this Agreement shall not relieve or release any Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by any Party under the terms of this Agreement prior to the termination hereof.

18.3 Should this Agreement not be renewed beyond the initial term or any successive term, NYS&W shall be responsible for the filing of discontinuance of the rights granted herein with the STB and any other applicable regulatory authorities.

Section 19. ARBITRATION

Any irreconcilable dispute arising between the Parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the Parties hereto. Each Party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, cost and expense of the arbitrator, if any, shall be borne equally by the Parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

Section 20. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto. NYS&W shall not transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of CP, which consent shall not be unreasonably withheld if assignment or transfer is to a successor of NYS&W's operations north of the Joint Line and/or

east of the Joint Line Any assignment shall not be effective until such time as the assignee agrees, in writing, to be bound by all terms and conditions of this Agreement, including but not limited to Section 1.2.

Section 21. NOTICES

21.1 Except as may be otherwise provided in this Agreement or as may be otherwise mutually agreed to by the parties hereto from time to time, any and all notices or other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by certified mail, postage prepaid, upon the date so personally delivered or on the second day of uninterrupted postal service following the date so mailed, and shall be addressed to the persons at the following addresses.

To NYS&W The New York, Susquehanna and Western Railway Corporation
1 Railroad Avenue
Cooperstown, NY 13326

Attn: President

With a copy to:

The New York, Susquehanna and Western Railway Corporation
1 Railroad Avenue
Cooperstown, NY 13326
Attn: General Counsel

To CP: Director-Interline Management
Canadian Pacific
200 Clifton Corporate Parkway
Clifton Park, NY 12065

With a copy to:

**Manager – Interline Agreements
Canadian Pacific
501 Marquette Avenue South
Suite 1525
Minneapolis, MN 55402**

21.2 Either Party to this Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other party to this Agreement, in the same manner as provided above for all other written notices.

Section 22. AFFECT ON OTHER AGREEMENTS

All existing understandings and agreements between the Parties hereto, or their predecessors, relating to matters included herein, are hereby abrogated and made void except that neither Parties hereto shall be released from any liability which may have arisen under agreements and understandings in effect prior to the date of execution of this Agreement. Subjects understandings include but are not limited to;

(a) Consolidated Rail Corporation ("ConRail") and the Delaware and Hudson Railway Company executed a trackage rights agreement dated September 8, 1980, ("Base Agreement") providing for the terms and conditions whereby certain operating rights were granted to both Parties in the area of Scranton, PA and Binghamton, NY, to the extent that NYS&W is a successor in interest of ConRail under such Base Agreement.

Section 23. GOVERNING LAW

It is the intention of the Parties hereto that the laws of the State of New York shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Parties' hereto.

Section 24. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

**DELAWARE AND HUDSON
RAILWAY COMPANY, INC.
d/b/a Canadian Pacific**

By

Its Director, Interline Management

Date OCTOBER 27 2008

**THE NEW YORK, SUSQUEHANNA
AND WESTERN RAILWAY
CORPORATION**

Bv

Its PRESIDENT

Date October 24, 2008

EXHIBIT A – October 1, 2008 Trackage Diagram Binghamton, NY.

Locations off the Buffalo Runner

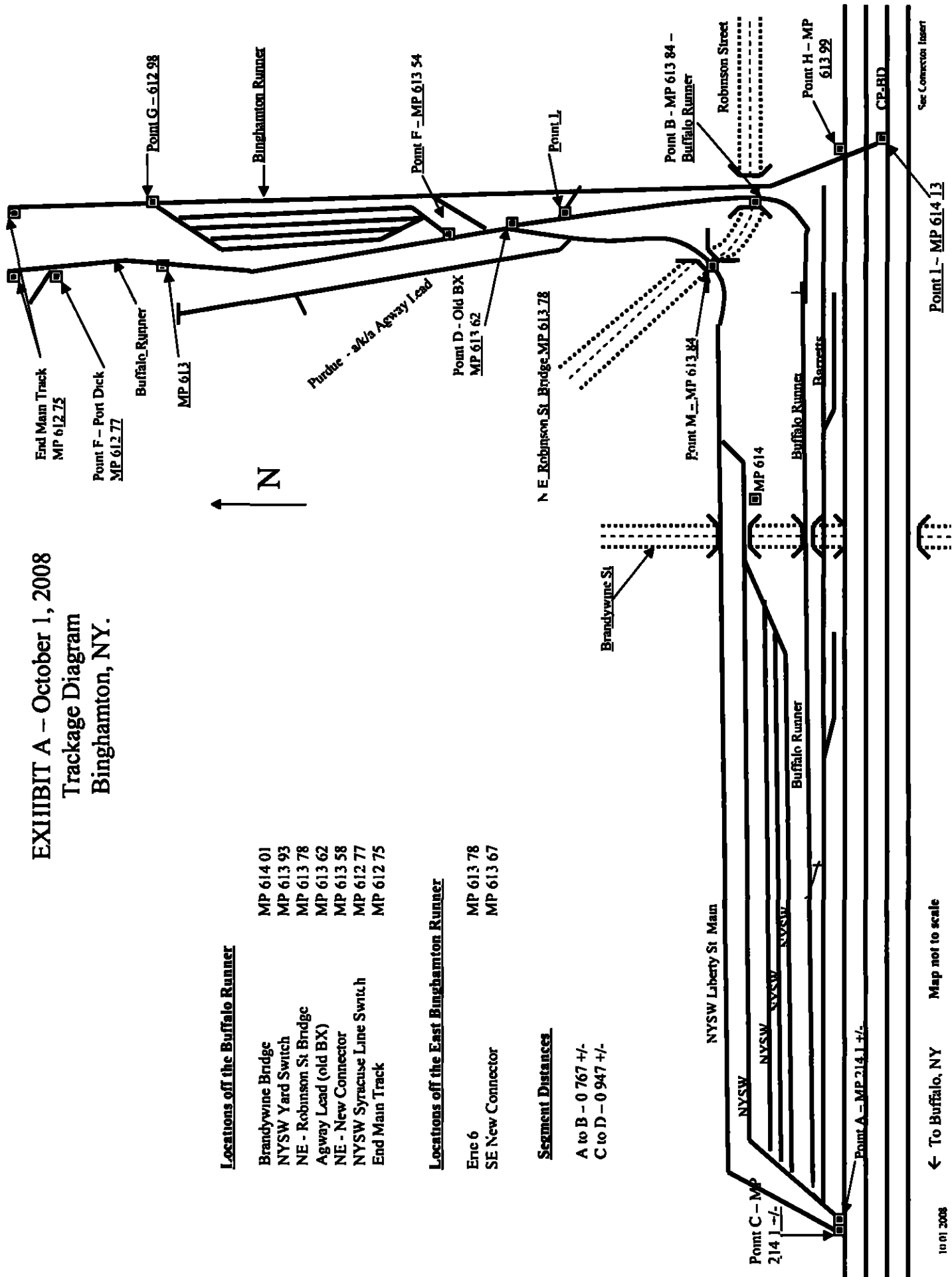
Brandywine Bridge	MP 614 01
NYSEW Yard Switch	MP 613 93
NE - Robinson St Bridge	MP 613 78
Agway Lead (old BX)	MP 613 62
NE - New Connector	MP 613 58
NYSEW Syracuse Line Switch	MP 612 77
End Main Track	MP 612 75

Locations off the East Binghamton Runner

Enc 6	MP 613 78
SE New Connector	MP 613 67

Segment Distances

A to B - 0 767 +/-
C to D - 0 947 +/-



← To Buffalo, NY Map not to scale

Connector Insert

October 1, 2008

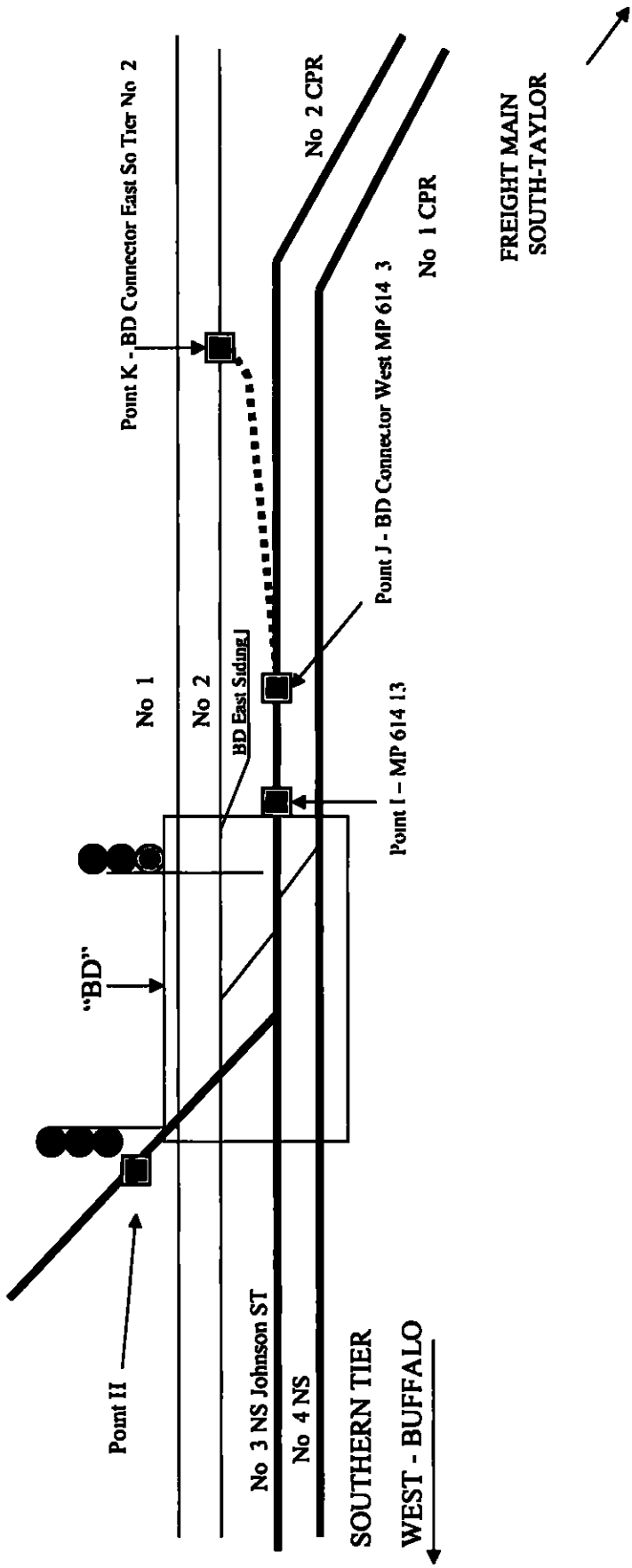


EXHIBIT 3

Purchase and Sale Agreement and Amendment

AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, dated November 15, 2008 by and between **DELAWARE AND HUDSON RAILWAY COMPANY, INC.**, doing business as Canadian Pacific Railway Inc., a railroad corporation duly organized and existing under the laws of the State of Delaware having its office and principal place of business located at 200 Clifton Corporate Park, P.O. Box 8002, Clifton Park, NY 12065, ("Seller") and **THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION**, a RAILROAD corporation duly organized and existing under the laws of the State of New Jersey and having its office and principal place of business at 1 Railroad Avenue, Cooperstown, NY 13326 ("Buyer").

WITNESSETH:

WHEREAS, Seller and Buyer are Parties to a Purchase and Sale Agreement dated December 15, 2004 concerning the sale of approximately 10.8 acres of real property, rail line, and appurtenances thereon in the City of Binghamton, New York, and

WHEREAS, the Parties wish to clarify the description of the rail line that is the subject of this transaction for the purpose of filing a Notice of Exemption with the Surface Transportation Board

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby agree as follows.

Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer all the right, title and interest of Seller in and to the rail line between NS milepost 214.1+/- and CP milepost 613.62 +/-, a distance of approximately 0.95 miles.

IN WITNESS WHEREOF, this Amendment has been executed on the day and year first above written

Witness.

Kathy S. Perry

**THE NEW YORK, SUSQUEHANNA AND
WESTERN RAILWAY CORPORATION**

By

[Signature]
Its Duly Authorized Agent

Witness

Ellen H. [Signature]

**DELAWARE AND HUDSON RAILWAY
COMPANY, INC.**

By:

[Signature]
Its Duly Authorized Agent

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, dated *December 15*, 2004, by and between **DELAWARE AND HUDSON RAILWAY COMPANY, INC**, a railroad corporation duly organized and existing under the laws of the State of Delaware having its office and principal place of business located at 200 Clifton Corporate Park, P O Box 8002, Clifton Park, NY 12065, (hereinafter referred to as "Seller") and **THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION**, a railroad corporation duly organized and existing under the laws of the State of New Jersey having its office and principal place of business located at 1 Railroad Avenue, Cooperstown, NY 13326, (hereinafter referred to as "Buyer")

WITNESSETH:

WHEREAS, Seller is a railroad corporation and owner of two (2) parcels of land, containing, in total, approximately 10.8 acres, located in the City of Binghamton, Broome County, NY, and

WHEREAS, Seller desires to sell and convey 10.8 acres to Buyer and Buyer is willing and able to purchase same

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby agree as follows

1. PURCHASE AND SALE Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer under the terms and conditions of this Agreement, all the right, title and interest of Seller in and to that parcel of real property described in Appendix "A" hereof, (the Land) and the improvements thereon

2. DEED- RESERVATIONS AND COVENANTS The Property will be conveyed at the closing by quit claim deed. The following reservations and covenants will be included in the deed (in these reservations and covenants, Seller is referred to as Grantor, Buyer is referred to as Grantee, and the Property is referred to as the real property)

As used in this paragraph, "Appurtenant Parcel" means real estate or real estate interests which are (a) owned by Grantor as of the date hereof and (b) located adjacent to (though not necessarily contiguous to) the above-described real property. Grantor reserves unto itself, and its successors and assigns, a permanent, non-exclusive easement in, over, under, and upon the above-described real property for the continued use, access to, maintenance, and renewal of such existing public and private utilities as are needed to serve the Appurtenant Parcel, including, but not limited to, sewers, drains, water mains, conduits, steam lines, compressed air lines, pneumatic lines, gas lines, oil or gasoline pipelines, wires, cables, electric lines, signal and communication lines, and telephone or telegraph lines (and other data transmission lines). Said easement shall be appurtenant to, and for the benefit of, the Appurtenant Parcel.

All utilities and related facilities whether above, below or upon the surface of real property, including, but not limited to electrical transmission and distribution lines, telephone lines, fiber optic or coaxial cables, pipelines, sewers, and transmission towers (such as for cellular telephone service, and any improvement appurtenant there to, such as, but not limited to, poles, guy wires, anchors, footings, foundations, transformers, junction or service boxes, or repeater or signal stations, collectively the "Utilities," and all agreements relating to such Utilities, are excepted from the purchase, and Grantor reserves to itself, and its successors and assigns a permanent easement, or easements, as the case may be, (Utility Easement(s)) over the portions of the real

property located within ten (10) feet of each such Utility, for the operation, maintenance, repair, alteration, renewal, replacement, and removal of such Utility, together with a permanent easement of sufficient width for pedestrian and vehicular access (an Access Easement) to and from each such Utility and the right to trim vegetation that may be deemed by the operator of any such Utility to interfere with such Utility. The location of the Utility Easements shall be shown and described on the survey required in Section 9 and the description or descriptions to be recited in the deed for reservation of the Utility Easement(s) shall be derived from said survey. Notwithstanding any language within this paragraph to the contrary, Grantee may, at its sole cost and expense, and with prior notification to and approval by the Grantor, relocate such Utilities within said real property, providing that such relocation does not in any way diminish the functionality and efficient use of said relocated Utilities.

3. **PURCHASE PRICE** The purchase price of the Property is \$40,000.00 per acre net to Seller.

4. **CLOSING** This transaction shall close at a mutually agreeable time and place on or before March 31, 2005, or upon such later date as the parties may agree.

5. **DEPOSIT, PAYMENT OF PURCHASE PRICE** Buyer encloses \$21,000.00 (the Deposit) in the form of a certified check or cashier's check payable to Seller. The Deposit shall be applied to the purchase price. The balance of the purchase price shall be paid to Seller at the closing by a certified or cashier's check payable to Seller.

7. **ENCUMBRANCES** The Property will be conveyed subject to facts which would be disclosed by a comprehensive survey, rights and claims of parties in possession, rights of the public, and easements, leases, licenses, and permits. Buyer may object to the marketability of Seller's title on the basis of such matters.

8. **JUDGMENT LIENS** Any judgment against Seller which may appear of record as a lien against the Property shall be settled and satisfied by Seller within 30 days after it becomes final and unappealable, and Seller shall indemnify Buyer, and Buyer's title insurer, for any loss sustained by either of them as a result of Seller's failure to have any such judgment lien so settled and satisfied. Buyer may object to the marketability of Seller's title on the basis of such matters.

9. **SURVEY** Buyer may, at its expense, have a survey of the Land prepared by a surveyor licensed or registered in the State of New York. If a certified survey is required by law, the survey shall be duly certified. The survey shall show

- a and describe the Property to be sold,
- b and describe easements or other rights reserved onto Seller pursuant to section 2, including, but not limited to, billboard(s), utility lines or railroad tracks,
- c the location of all known easements and improvements, including, but not limited to, easements for railroad tracks, other than those easements reserved for tracks pursuant to section 2, and
- d the location of all Seller's railroad tracks within 50 feet of the outer boundaries of the Land.

If the purchase price requires a certification as to square footage, the same shall be certified by the surveyor. The survey shall be subject to Seller's approval, which approval shall not be unreasonably withheld. Buyer shall deliver the survey to Seller no later than 45 days after Seller's acceptance of this offer. Seller shall have 10 days in which to disapprove the survey by giving notice to Buyer of the matters which render the survey unacceptable. If Seller fails to give such

notice, the survey shall be deemed approved. If Seller gives such notice, Buyer shall make a good faith attempt to remedy such matters and shall, within 10 days of Seller's notice, deliver a revised survey to Seller. Seller shall have 10 days in which to disapprove the revised survey by giving Buyer notice of the matters which render it unacceptable. If Seller fails to give such notice, the survey shall be deemed approved. If Seller gives such notice, this agreement shall thereupon terminate unless Seller, at its option, shall agree in writing to permit Buyer to make additional revisions to the survey. If this agreement is terminated pursuant to this paragraph, Seller shall refund the Deposit without interest, provided, however, that Seller may retain the Deposit, as liquidated damages, in the event such termination results from Buyer's bad faith failure to comply with the spirit and intent of this paragraph.

10. PLATS AND SURVEYS Buyer will be responsible for preparing, at its expense, any survey, plat, subdivision or site plan required by any governmental authority (including any survey, plat subdivision or site plan of Seller's property contiguous to the Land, where such survey, plat subdivision or site plan is required in connection with, or as a consequence of Buyer's purchase of the Land). The survey, plat, subdivision or site plan, if filed prior to Closing, shall not be so filed, or recorded, without Seller's advance written approval, which approval shall not be unreasonably withheld, or delayed, by Seller.

11. RIGHT OF ENTRY During the first 90 days after Seller's acceptance of this offer, Buyer (and its employees, agents, and contractors) may enter the Property and, to the extent necessary to effectuate the purposes of this paragraph, Seller's land in the vicinity of the Property (such land and the Property being referred to, collectively, as the Site), for the purpose of conducting soil tests, environmental tests, and a survey, subject to the following conditions:

(a) Buyer shall give Seller reasonable advance notice of the date and time of each entry and the nature of the activities to be conducted on the Site at each such date and time.

(b) Seller may elect to be present during the conduct of such activities and to monitor same. Such monitoring shall not relieve Buyer of any liability under this paragraph 11.

(c) Prior to entering the Site, Buyer shall secure the permission of any tenant then in possession of same.

(d) Upon the completion of its activities on the Site, Buyer shall remove any debris resulting from such activities and shall restore the Site to the condition it was in prior to the commencement of such activities.

(e) Buyer shall indemnify, hold harmless and defend the Indemnitees (as defined below) from and against all Claims arising out of, resulting from or relating to any loss of (or damage to) any property or business or any injury to (or death of) any person, where such loss, damage, injury, or death actually or allegedly arises (whether directly or indirectly, wholly or in part) from (a) any action or omission of Buyer (or its employees, agents, or contractors) while on the Site pursuant to this paragraph 11, or (b) the exercise by Buyer (or its employees, agents, or contractors) of the permission granted by this paragraph 11, or (c) the release of any Hazardous Substance (as defined in paragraph 23) resulting (directly or indirectly, wholly or in part) from any action or omission of Buyer (or its employees, agents, or contractors) while on the Site pursuant to this paragraph 11. Indemnitees means Seller, its subsidiaries, affiliated companies and parent companies, and their directors, officers, employees and agents, including without limitation Delaware and Hudson Railway Company, Inc. and Canadian Pacific Railway Company.

(f) Buyer (and its employees, agents, and contractors) shall comply with all applicable laws while on the Site.

(g) Buyer will not commence any environmental testing until its work plan for such testing has been approved in writing by Seller, which approval shall not be unreasonably withheld, conditioned or delayed. Buyer will provide Seller with complete copies of the test data and test reports as soon as they are available to Buyer.

(h) The cost of any test or survey will be borne solely by Buyer.

(i) Test holes shall be located no closer than 20 feet from the nearest rail of any railroad track located on or adjacent to the Site. Drilling equipment and related equipment shall not be placed closer than 20 feet from the nearest rail of any such track.

(j) While on the Site, Buyer (and its employees, agents, and contractors) shall comply with Seller's safety rules, including any requirement regarding the use of flagmen. All costs associated with compliance with such rules shall be borne by Buyer. If Seller shall incur any costs in connection therewith, Buyer shall reimburse Seller within 30 days after receipt of Seller's invoice.

(k) Unless disclosure is required by court order or applicable law, Buyer shall maintain, and shall cause its employees, agents, and contractors to maintain, the confidentiality of all information pertaining to any environmental test performed on the Site.

(l) If any mechanic's or materialmen's lien, or similar lien, is asserted against the Site, the Property, or any other property of Seller or the Indemnitees as a result of the exercise of the permission granted in this paragraph 11, Buyer shall immediately satisfy and/or obtain the release of such lien, all at Buyer's expense, and Buyer shall indemnify, hold harmless and defend the Indemnitees from and against all Claims arising out of or connected with such lien.

12 TITLE MATTERS Seller makes no warranty or representation with respect to the marketability or quality of its title and is not under any obligation to furnish abstracts of title, title reports, or title insurance policies in respect of the Property. Buyer shall have 90 days after Seller's acceptance of this offer in which to raise objections to the marketability of Seller's title. If Buyer objects to Seller's title, it must give Seller notice within such 90-day period, specifying the precise nature of the alleged title defects. The notice must be accompanied by evidence of the alleged defects, in the form of a copy of an abstract of title or a title company's title commitment. If Buyer fails to give proper or timely notice, it shall be deemed to have waived its right to object (except that defects which arise subsequent to the 90-day period shall not be deemed waived unless Buyer fails to give Seller notice of same promptly after it learns, or in the exercise of reasonable diligence should have learned, of them), furthermore, even if Buyer gives proper and timely notice, it shall be deemed to have waived its right to object on the basis of then-existing defects not specified in the notice. Seller shall have 45 days or until the closing, whichever is less (the Cure Period), in which it may, if it so chooses, attempt to cure any defect specified in a timely and otherwise proper notice. Seller has no obligation or responsibility whatsoever to cure (or attempt to cure) any title defect. If Seller shall undertake to cure or attempt to cure any title defect, it may withdraw from such undertaking at any time without penalty, such undertaking shall not create, nor shall it under any circumstance be construed to create, any obligation whatsoever on the part of Seller to cure any such defect. If Seller is unable or unwilling to cure any specified defect, Buyer may terminate this agreement by giving Seller notice of termination at any time prior to the actual delivery and acceptance of the deed, which notice shall state that this agreement is being terminated by reason of Seller's failure to cure title defects. If Buyer gives proper and timely notice of termination, Seller shall refund the Deposit, without interest, and shall reimburse Buyer for the actual amount paid by Buyer for the abstract of title or title commitment, provided that the abstract or commitment is delivered and assigned to Seller. By accepting delivery of the quit claim deed, Buyer shall be deemed to waive any and all uncured title defects.

13 REAL ESTATE TAXES The total real estate tax bill accruing in the year in which the date of closing occurs will be prorated on a per diem basis as of the closing, using the most recent tax bill, such proration will be final and binding on Seller and Buyer and there shall be no post-closing adjustment. There will be no proration to the extent the payment of such taxes has been assumed by a lessee under a lease that will be assigned to Buyer or merged into the purchase.

14. TRANSFER TAXES AND FEES Buyer will purchase, affix, and cancel any and all documentary stamps in the amount prescribed by statute, and will pay any and all transfer taxes, excise taxes, sales taxes, use taxes, and fees incidental to the transfer of the Property or the recordation or filing of the deed and any related documents.

15 SPECIAL ASSESSMENTS Buyer will assume responsibility for paying any special assessment (or installment thereof) where the due date for payment is on or after the date of this offer, irrespective of the date of the improvement.

16. NOTICES Notices permitted or required by this agreement must be in writing and shall be deemed given when delivered in legible form to the business address of the party to whom addressed. If delivered at the closing, a notice shall be deemed given when hand-delivered to the party's representative at the closing. The business addresses of the parties are as follows:

Seller --	
mailing address	P O Box 8002 Clifton Park, NY 12065
Attn	Manager Real Estate & Industrial Development
delivery address	200 Clifton Corporate Park Clifton Park, NY 12065
Attn	Manager Real Estate & Industrial Development
telecopier	(518) 383-7222
Attn	Manager Real Estate & Industrial Development
Buyer—	
Mailing address	1 Railroad Avenue Cooperstown, NY 13326
Attn	Executive Vice President-General Counsel
Delivery address	Same
Telecopier	607-547-9834
Attn	Executive Vice President-General Counsel

Notices not given in the manner or within the time limits set forth in this agreement are of no effect and may be disregarded by the party to whom they are directed.

17. REAL ESTATE BROKERS Seller represents that it has not retained any real estate broker or agent in connection with this transaction. If any real estate broker or agent can establish a valid claim for commission or other compensation in connection with this transaction, such commission or other compensation shall be paid by Buyer.

18. LEASES Except as may be reserved unto Seller pursuant to Section 2, at and as of the closing, Seller will assign to Buyer Seller's rights, and Buyer will assume Seller's obligations, under any lease which (a) was granted by Seller (or its predecessors in interest) as lessor, (b) is known to Seller, and (c) includes or burdens any portion of the Property, provided, that if Buyer is the lessee under such a lease, that lease shall merge into the purchase as of the closing. And further provided, that if a lease includes property other than the Property, the assignment and assumption (or merger) shall be limited to the leasehold interest in the Property. The assignment and assumption contemplated by this paragraph shall be limited to rights and obligations accruing as of and after the closing. There shall be no proration of prepaid rentals, prepaid fees, or other prepaid charges in respect of any such lease. Seller will provide a copy of each such lease to Buyer within 30 days after Seller accepts this offer. At the closing, the parties will execute an assignment and assumption agreement incorporating the terms of this paragraph and identifying such lease or leases.

19. EASEMENTS, LICENSES, AND PERMITS Except as may be reserved unto Seller pursuant to Section 2, at and as of the closing, Seller will assign to Buyer Seller's rights, and Buyer will assume Seller's obligations, under existing easements, licenses, and permits (collectively, instruments) which (a) were granted by Seller (or its predecessors in interest), (b) are known to Seller, and (c) include or burden any portion of the Property. There shall be no proration of prepaid rentals, prepaid fees, or other prepaid charges in respect of any such instrument. If such an instrument pertains in part to property other than the Property, the assignment and assumption shall be limited to the interest the instrument creates in the Property. In the event of such partial assignment, the rentals, fees, and other charges which come due after the closing shall be allocated between Seller and Buyer on the basis of the square footage of the land area of their respective interests in the property affected by the instrument, provided, however, that where the rental, fee, or other charge was established on a basis other than square footage, the adjustment shall be determined using such other basis. The assignment and assumption contemplated by this paragraph shall be limited to rights and obligations accruing as of and after the closing. Seller will provide a copy of each such instrument to Buyer within 30 days after Seller accepts this offer. At the closing, the parties will execute an assignment and assumption agreement incorporating the terms of this paragraph and identifying such instrument or instruments.

20. AS IS, ALL FAULTS; NO REPRESENTATION BY SELLER Buyer agrees to accept the condition of the Property, including specifically without limitation, the environmental and geological condition of the Property, in an "AS-IS" and with "ALL FAULTS" condition. Buyer's acceptance of title to the Property shall represent Buyer's acknowledgment and agreement that (i) Seller has not made any written or oral representation or warranty of any kind with respect to the Property (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose), (ii) Buyer has not relied on any written or oral representation or warranty made by Seller, its agents or employees with respect to the condition or value of the Property, (iii) Buyer has had an adequate opportunity to inspect the condition of the Property, including without limitation any environmental testing, and to inspect documents applicable thereto, and Buyer is relying solely on such inspection and testing, and (iv) the condition of the Property is fit for Buyer's intended use. Buyer agrees to accept all risk of Claims (including without limitation all Claims under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) whether past, present or future, existing or contingent, known or unknown, arising out of, resulting from or relating to the condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property.

21. RELEASE: Buyer, for itself, its directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors, and assigns and anyone acting on its behalf or their behalf hereby fully releases and forever discharges Seller from any and all Claims (including without limitation all Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation), past, present and future, known and unknown, existing and contingent, arising out of, resulting from, or relating to the condition of the Property, and Buyer hereby waives any and all causes of action (including without limitation any right of contribution) Buyer had, has or may have against Seller and its respective directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, grantors or anyone acting on its behalf or their behalf with respect to the condition of the Property, whether arising at common law, in equity or under a federal, state or local statute, rule or regulation. The foregoing shall apply to any condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property.

22. ENVIRONMENTAL PARTIES' RIGHT TO TERMINATE Either party may terminate this agreement at any time prior to the delivery of the deed if it determines, in the exercise of its discretion, that circumstances related to Hazardous Substances render the sale inadvisable. In the event of such termination, Seller will refund the Deposit, without interest. The closing of the sale, if it occurs, is not, and shall not be construed as, an actual or implied representation or warranty by Seller as to the condition of the Property or the absence of Hazardous Substances.

23. DEFINITIONS:

"Claim" or "Claims" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims).

"Environmental Law" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act (the Clean Water Act), 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.

"Hazardous Substance" or "Hazardous Substances" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

24. LITIGATION EXPENSES In any action brought in connection with this agreement, the prevailing party shall be entitled to recover its litigation expenses, including, but not limited to, court costs, disbursements, witness fees, experts' fees, and attorneys' fees.

25. LIQUIDATED DAMAGES AND SPECIFIC PERFORMANCE If Buyer fails to perform any of the terms or conditions of this agreement within the specified time limits, Seller may, at Seller's option, declare this agreement terminated and retain the Deposit as agreed liquidated damages, or have this agreement specifically enforced. Likewise, if Seller fails to perform any of the terms or conditions of this agreement within the specified time limits, Buyer may declare this agreement terminated (in which event Seller shall refund the Deposit, without interest), or Buyer may have this agreement specifically enforced. The rights and remedies granted to the parties in this paragraph are intended to be cumulative to all other rights and remedies available to the parties (whether under this agreement, at law, in equity or otherwise), accordingly, the exercise by either party of any such right or remedy shall not preclude it from exercising any other such right or remedy.

26. COMPUTATION OF TIME For the purpose of computing the time periods specified in this agreement, Saturdays, Sundays and legal holidays shall be counted. However, where the last day for performing any act falls on a Saturday, Sunday, or legal holiday, that act may be performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

27. ENTIRE AGREEMENT This agreement constitutes the entire agreement between the parties with respect to the sale and purchase of the Property. Buyer has not relied on any statements or representations by Seller except as are set forth in this agreement.

28. NON-ASSIGNABILITY. Buyer shall not in any manner assign or transfer its rights under this agreement, voluntarily or involuntarily, by operation of law or otherwise, without the advance written consent of Seller. Any attempted or purported assignment or transfer by Buyer without such consent shall be void. Subject thereto, this agreement shall inure to the benefit of, and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties.

29. SURVIVAL OF TERMS AND CONDITIONS: The terms and conditions of this agreement shall survive and be in full force and effect after the delivery of the deed, and shall not be deemed to have merged therein.

30. SURVIVAL OF INDEMNIFICATION, LITIGATION EXPENSE AND CONFIDENTIALITY PROVISIONS: The indemnification, litigation expense, and confidentiality provisions of this agreement shall survive its termination.

31. APPLICABLE LAW. This agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

32. SEVERABILITY: Each provision, paragraph, sentence, clause, phrase, and word of this agreement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision, paragraph, sentence, clause, phrase or word of this agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the agreement.

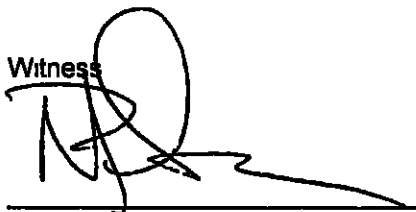
33. RAIL SERVICE, NO OBLIGATION: Nothing in this agreement is intended to create, nor shall it be construed to create, any express or implied obligation on the part of Seller to provide (or continue to provide) rail service to Buyer and/or the Property. Nothing in this


agreement is intended to prevent or limit, nor shall it be construed to prevent or limit, the discontinuance, by Seller, of rail service over any railroad line or trackage by which rail service is or may be provided to Buyer and/or the Property


34 RIGHTS OF COMMISSIONER OF TRANSPORTATION This Agreement and the obligations created thereunder may be subject to preferential rights of the Commissioner of the New York State Department of Transportation to acquire the Property. In the event the Commissioner exercises such right in accordance with Section 18 of the New York State Transportation Law, this Agreement shall terminate. Seller shall return any down payment made by Buyer and, upon such return, neither party shall have any further right or obligation against the other. Buyer shall be responsible for recording any release of such right by the Commissioner at Buyer's sole cost and expense.

35 HEADINGS: The paragraph headings used in this agreement are used solely for the purpose of convenience. They are not intended to, and do not, modify or limit the wording of the paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.

IN WITNESS WHEREOF, this Agreement has been executed on the day and year first above written.

Witness


THE NEW YORK, SUSQUEHANNA AND
WESTERN RAILWAY CORPORATION
By 
President

Witness


DELAWARE AND HUDSON RAILWAY COMPANY, INC.
By 
Its Duly Authorized Agent

APPENDIX "A"

All those two lots, pieces or parcels of land situate, lying and being in the City of Binghamton, County of Broome and State of New York, generally bounded and described as follows

FIRST PARCEL:

BEING all the property of the Seller beginning at Chenango Street and running easterly and northeasterly to the southerly line of Robinson Street, containing about 8 5 acres

SECOND PARCEL:

BEING a parcel of land lying in the most northwesterly portion of the property of the Seller beginning at the northerly line of Robinson Street and running northeasterly to the most northerly line of the property as was conveyed by Consolidated Railroad Corporation to Delaware and Hudson Railway Company by Deed dated December 29, 1982, and recorded in the Broome County Clerk's Office April 22, 1983, containing about 2 3 acres (The actual acreage to be determined upon final track lay-out)

TOGETHER WITH any and all right, title and interest of the Seller in and to that span of railroad Bridge No 613 84 crossing over Robinson Street, which bridge connects the above two parcels, together with any and all of the supports, piers, back walls and appurtenances of said bridge

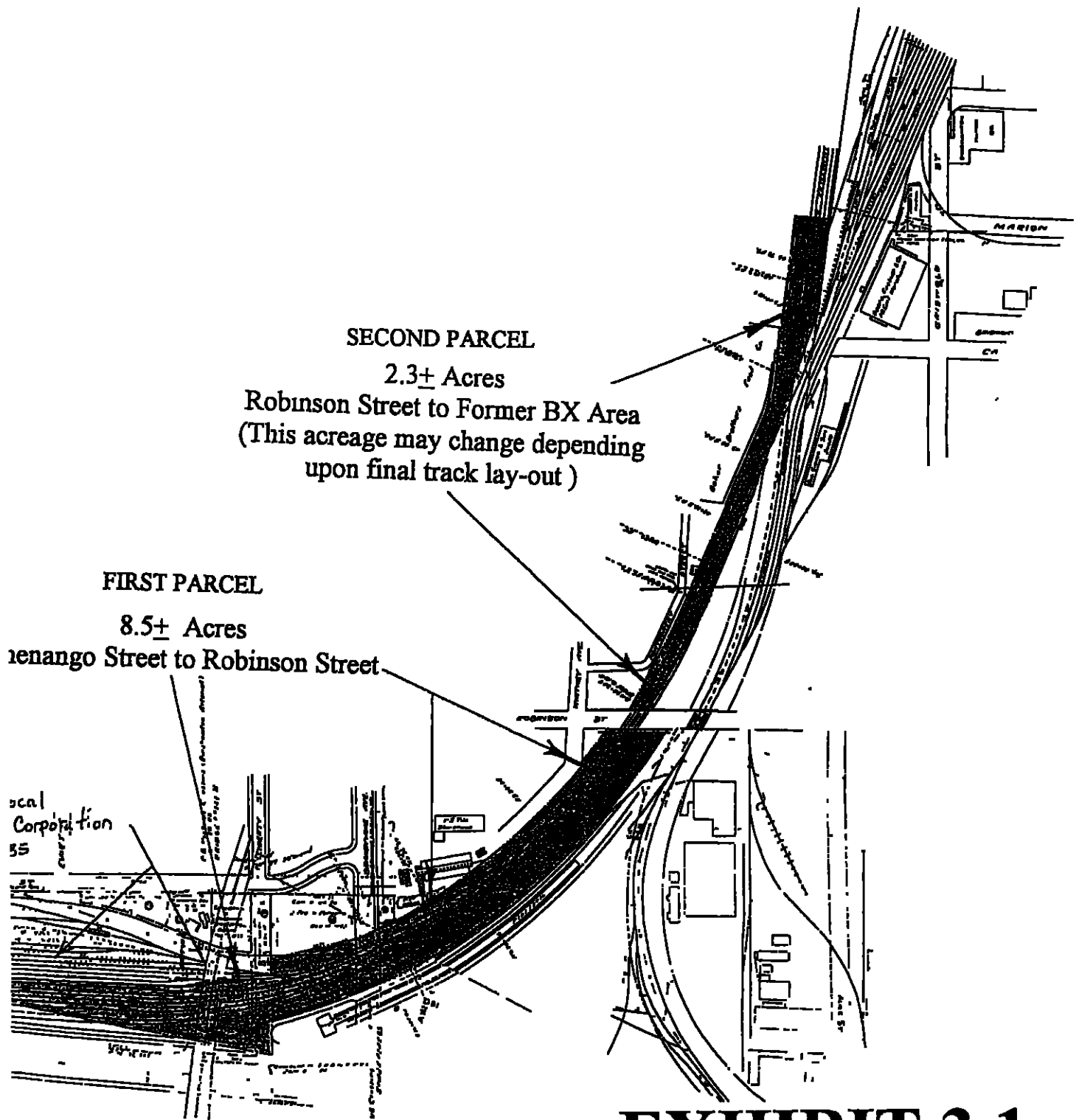


EXHIBIT 3.1

DELAWARE AND HUDSON RAILWAY COMPANY, INC.
 REAL ESTATE DEPARTMENT
 Map Showing Land At

BINGHAMTON, NY

City of Binghamton

Broome County

NORTH

FIR

8

Chenango Str

Conveyed to
Binghamton Local
Development Corporation
Nov 22, 1985

BINGHAMTON
NY

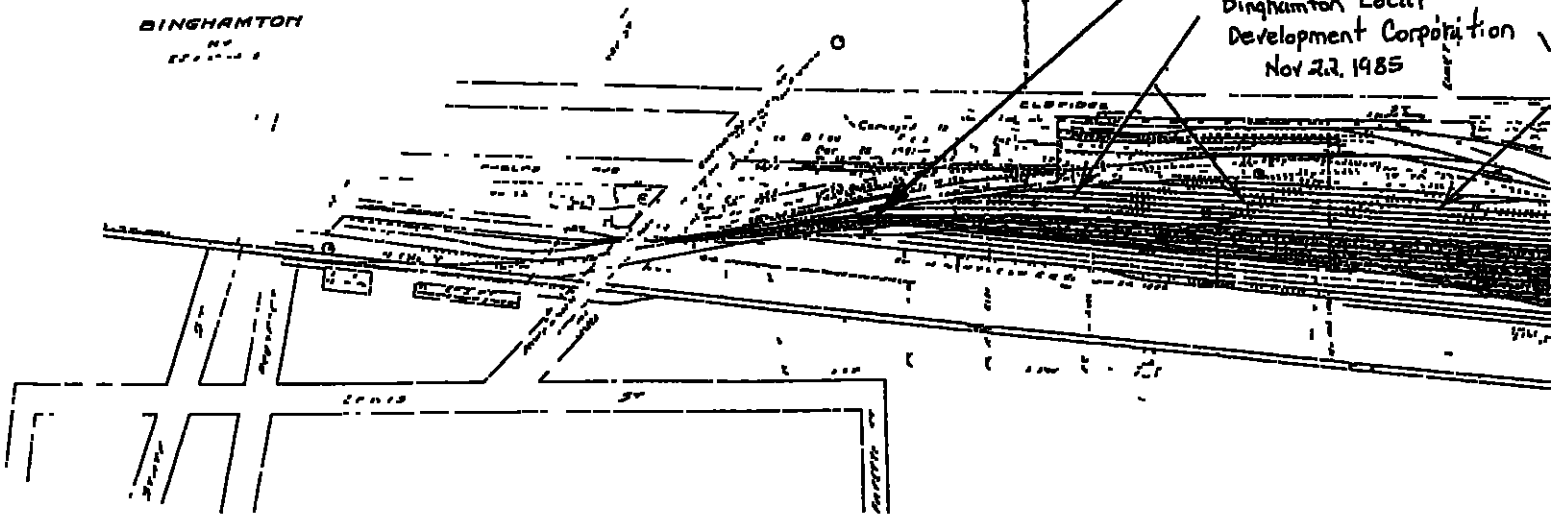


EXHIBIT 4
Caption Summary

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION FINANCE DOCKET NO 35197

DELAWARE AND HUDSON RAILWAY COMPANY, INC AND THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION —JOINT RELOCATION PROJECT EXEMPTION— BINGHAMTON, NEW YORK

Delaware and Hudson Railway Company, Inc dba Canadian Pacific ("CP") and The New York, Susquehanna and Western Railway Corporation ("NYS&W") are undertaking a joint relocation project which includes the joint use and operation over track stemming from the exchange of non-exclusive reciprocal trackage rights between CP and NYS&W, the sale to NYS&W of CP's trackage and right-of-way between NS milepost 214 1 +/- and CP milepost 613 62, and the relocation, reconstruction and maintenance of trackage within the terminal area in Binghamton, New York. The purpose of the project is to rationalize track usage and freight operations in the Binghamton terminal area which will enable more efficient and expeditious rail service without disruption to shippers. This transaction will be consummated on or immediately after the effective date of this Notice of Exemption.

The joint relocation project consists of the following transactions:

- (1) The sale of CP's trackage and right-of-way between NS milepost 214 1 +/- and CP milepost 613 62, a distance of approximately 0.95 miles.
- (2) NYS&W will grant CP non-exclusive overhead trackage rights to operate over NYS&W tracks between NS milepost 214 1 +/- and CP milepost 613 84, between NS milepost 214 1 +/- and CP milepost 613 62, and between CP milepost 613 62 and CP milepost 612 77, a distance of approximately 2.56 miles. NYS&W will continue to operate over these segments.
- (3) CP will grant NYS&W non-exclusive overhead trackage rights to operate over CP tracks between CP milepost 613 84 and CP milepost 613 62, between CP milepost 613 54 and CP milepost 612 98; between CP milepost 612 98 and CP milepost 613.99, and between CP milepost 614 13 and CP milepost 614 30, a distance of approximately 1.96 miles. CP will continue to operate over these segments.

Subject to approval of the Board, the above overhead reciprocal trackage rights will terminate ten (10) years from the effective date. Unless NYS&W or CP notifies the other in writing at least six (6) months prior to the expiration of the initial term or any successive term, the reciprocal trackage rights shall continue in full force and effect for

up to three (3) successive terms of ten (10) year terms under the same terms and conditions

The transaction will be consummated on or immediately after the effective date of this Notice of Exemption.

This Notice is filed under the Board's class exemption for joint relocation projects, 49 C.F.R. § 1180.2(d)(5). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated
By the Board,

Anne K. Quinlan,
Acting Secretary